

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD

5 - - - - - - - - - - - - - X

6 IN THE MATTER OF: :

7 Jasper Ventures, LLC: Case # 15-CMP-00697

8 t/a Capitale :

9 1301 K Street NW :

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10 License #72225 :
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11  Retailer CN :
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12 ANC 2F :

13 Selling, Serving after Hours :

14 - - - - -X

15 Wednesday, April 26, 2017

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17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

21

1 BOARD MEMBERS PRESENT

2 DONOVAN ANDERSON, CHAIRMAN

3 NICK ALBERTI, BOARD MEMBER

4 JAKE PERRY, BOARD MEMBER

5 MIKE SILVERSTEIN, BOARD MEMBER

6

7 ALSO PRESENT:

8 ALEKSANDAR SASHA ZIVKOVIC

9 WALTER ADAMS

10 KEOMI MONROE

11 DAVID CHUNG

12 KIJUN SUNG

13 SUSANA RIVERO

14 WAYNE JUNE

15 CHRIS MILLER

16 ANTHONY HOWZE

17 DORSHAE DEMBY

18

19

20

21

1 P R O C E E D I N G S

2 SHOW CAUSE HEARING (STATUS)

3 CHAIRPERSON ANDERSON: Our next case is
4 case #15-CMP-00697, Capitale, license #72225.
5 Will the parties please approach and identify
6 themselves for the record, please?

7 MR. ADAMS: Good morning, Mr. Chairman,
8 Walter Adams representing the District of
9 Columbia.

10 CHAIRPERSON ANDERSON: Good morning, Mr.
11 Adams.

12 MR. CHUNG: Good morning, Mr. Chairman, David
13 Chung on behalf of license, Jasper Ventures.

14 CHAIRPERSON ANDERSON: Good morning, Mr.
15 Chung.

16 MR. SUNG: Good morning, Kijun Sung for
17 Jasper Ventures.

18 CHAIRPERSON ANDERSON: Good morning, Mr. --
19 what's your role in that?

20 MR. SUNG: I'm the owner.

21 CHAIRPERSON ANDERSON: Thank you, Mr. Sang?

22 MR. SUNG: Sung, S-U-N-G.

1 CHAIRPERSON ANDERSON: Sung. I apologize,
2 sir. Are there any preliminary matters in this
3 case?

4 MR. ADAMS: The District has none.

5 MR. CHUNG: Yes, Mr. Chairman, I have two
6 preliminary matters -- three preliminary matters,
7 actually. The first is as this board may be well
8 aware I have a motion for recusal that is waiting
9 on a decision by the board.

10 CHAIRPERSON ANDERSON: I'm not aware of that,
11 sir.

12 MR. CHUNG: That was filed last week on April
13 19th and today I brought a Rule 63 affidavit for
14 the superior court rules with regard to recusal
15 for Mr. Alberti. I believe there is personal
16 bias against myself and my clients here. I
17 apologize to bring this news if the board is
18 unaware of it, but I have a notarized affidavit
19 and to ensure a fair and just trial, I would ask
20 that the board look at the motion and have Mr.
21 Alberti recused from today's proceedings. And I
22 have two more preliminary matters if you'd like

1 to go one at a time.

2 CHAIRPERSON ANDERSON: I've not seen the
3 motion so I was not aware that there was a
4 motion. Maybe it was filed with the agency but
5 it has not been shared with the board so I've not
6 seen the motion and I'm not sure --

7 MR. CHUNG: May I approach, please?

8 CHAIRPERSON ANDERSON: You can give it to Ms.
9 Randall there, and I'll try to get it here from
10 the government.

11 MR. CHUNG: Just to clarify and to bring
12 everyone up to speed, we have an April 19th
13 motion that was filed last week with ABRA Legal
14 and this morning I had the Rule 63 I affidavit as
15 well as a follow-up motion pertaining to today's
16 hearing.

17 CHAIRPERSON ANDERSON: I've not seen any of
18 it so I will -- Mr. Adams, have you seen the
19 motion?

20 MR. ADAMS: Yes, Mr. Chairman, I'm not aware
21 -- I've only been told by Mr. Chung regarding
22 first of all with the motion for recusal for Mr.

1 Alberti. I've only been informed of it, I
2 actually don't even have a copy of it and based
3 upon what is here there is no basis stated for
4 why the establishment's asking for Mr. Alberti to
5 be recused.

6 MR. CHUNG: Mr. Adams --

7 MR. ADAMS: I'm not done yet. Secondly, in
8 terms of a subpoena being issued for Mr. Alberti,
9 this is the type of motion that should have been
10 done and not only filed with the board, but
11 notice to the District who's opposing counsel so
12 the District would have a fair and reasonable
13 opportunity to respond. At this point, the
14 District believes that we are prejudiced in being
15 able to proceed -- or being able to consider the
16 motion. In terms of Mr. Alberti being asked to
17 become a witness, again, I would ask the licensee
18 to either proffer the basis for why this member
19 of the board would have to be a witness in this
20 case, so basically --

21 CHAIRPERSON ANDERSON: I -- I

22 MR. ADAMS: -- there's no reason.

1 CHAIRPERSON ANDERSON: I missed that part.
2 Did he? Maybe I missed something. Was there a
3 motion for Mr. Alberti to be a witness?

4 MR. ADAMS: I believe he stated Rule 63 I
5 subpoena, is that what is stated, sir?

6 MR. CHUNG: Mr. Chairman, may I clarify?

7 CHAIRPERSON ANDERSON: Yes, please.

8 MR. CHUNG: Okay. Number one, Mr. Adams had
9 a courtesy copy of the motion this morning and
10 looked at it in the hallway. Number two, the
11 rules and simple procedure, Rule 63 is not a
12 subpoena. Rule 63 is an affidavit regarding
13 recusal of judges -- admin judges and superior
14 court judges. By his very words, I don't
15 understand the basis of prejudice. If Mr.
16 Alberti is a nonbiased member of this board he
17 should have no problem with him leaving this
18 board for today's hearing. We have a quorum
19 here.

20 MR. ADAMS: Again, showing opposing counsel
21 by hand a copy of a motion I believe is pretty
22 objectively inadequate notice of such a very

1 important motion. But, again, based upon what I
2 saw, I don't even have a copy of this thing and
3 the board doesn't even have a copy of this. So,
4 first of all, board, you don't actually have
5 anything in front of you. Secondly, the District
6 hasn't had anything served upon it. Even from
7 what I saw, there was no actual basis or
8 rationale or any reason given for recusal. At a
9 very base level for any civil procedure or
10 proceeding, that would be necessary, especially
11 considering the nature of what's being asked,
12 this certainly is something that should be done
13 preliminary to the hearing that's a hint. So,
14 Mr. Chung has had, at this point, six months to
15 file this motion, decide to provide -- show me a
16 peek-a-boo copy today. That's just certainly not
17 going to be enough for us to proceed -- for us to
18 change things. So, the District's ready to
19 proceed forward.

20 CHAIRPERSON ANDERSON: What's the -- yes, Mr.
21 Chung?

22 MR. CHUNG: Mr. Anderson, the DCMR

1 specifically says you file these affidavits and
2 motions prior to trial. Mr. Adams doesn't know
3 the rules. You've got to read the rule.

4 MR. ADAMS: I have no response.

5 CHAIRPERSON ANDERSON: Okay, the first motion
6 is a motion for Mr. Alberti to be recused.
7 What's the second?

8 MR. CHUNG: The second motion is I have a
9 subpoena for Director Moosally. I discussed this
10 with him prior to today's hearing. I believe he
11 will provide testimony that is very germane to
12 what's going on here with regard to this
13 allegation with regard to service. Mr. Moosally
14 will provide great insight to this board with
15 regard to what's going on here.

16 CHAIRPERSON ANDERSON: Do you have a motion
17 for him to testify at the hearing today?

18 MR. CHUNG: I filled out the OAH subpoena.
19 May I approach?

20 CHAIRPERSON ANDERSON: You can give it to --

21 MR. CHUNG: This would have to be approved by
22 the board.

1 MR. ADAMS: Your honor, just for the record I
2 just want to let you know that Keomi Monroe is a
3 special Assistant Attorney General and is also
4 appearing on behalf of the District.

5 CHAIRPERSON ANDERSON: Ms. Monroe.

6 MR. CHUNG: And I have one more preliminary
7 matter after this.

8 CHAIRPERSON ANDERSON: Mr. Adams, are you
9 aware of this?

10 MR. ADAMS: I am not aware of it and the
11 District moves to quash Mr. Moosally -- as a high
12 ranking public official, being the top official
13 for this agency, I believe that he's not required
14 to testify.

15 MR. SILVERSTEIN: Please speak a little
16 louder.

17 MR. ADAMS: I believe that Mr. Moosally being
18 the highest ranking official for this agency, for
19 the Alcoholic Beverage Regulation Administration,
20 is high ranking, and as a result I would move to
21 quash first in terms of lack of notice, secondly
22 in terms of the fact that him being a high

1 ranking government official would exempt him from
2 having to be required to testify before the
3 board.

4 CHAIRPERSON ANDERSON: Mr. Adams, for this
5 type of motion, what's the procedure if Mr.
6 Moosally or if someone is being subpoenaed to
7 testify, are you aware of the procedure that
8 should be followed? I'm just asking. If you
9 don't know, you can --

10 MR. ADAMS: In terms, if I'm not mistaken,
11 the board -- in this case as the issues on
12 subpoena, so obviously any subpoena request would
13 have to be made to the board with sufficient
14 notice prior to the hearing, so if the board has
15 not received such a request within a sufficient
16 time, then such subpoena would be invalid and in
17 order for it to actually be valid, it would have
18 to be signed by the authority, whoever is the
19 tribunal which has to deal with the matter, plus
20 have it served upon the person. I'm not aware of
21 such, either service being done, and I'll refer
22 you to this body's own rules regarding subpoenas.

1 CHAIRPERSON ANDERSON: Mr. Chung, is this the
2 first time-- was this document filed prior to it
3 being handed to me today?

4 MR. CHUNG: Chairman Anderson: Number one, I
5 agree with Mr. Adams; we're actually on the same
6 page. For this tribunal to make a fair decision
7 with all the facts, you do want to go to the top.
8 You want the head guy coming in here and talking
9 about the facts of this case or the facts of the
10 policy behind ABRA.

11 Number two, I've had discussions with the
12 staff of Mr. Moosally yesterday. He offered that
13 I go ahead and testify as we know there are --
14 there is leniency with regard to hearsay before
15 this tribunal. He went ahead and said that it
16 would be okay that I go and testify as to what we
17 talked about. I discussed that with Mr. Adams in
18 the lobby and he said he would object to it.
19 Therefore, he's making me do what I need to do
20 and that's present a subpoena before this board.

21 CHAIRPERSON ANDERSON: That's not the
22 question I asked you, Mr. Chung. The question I

1 asked you is that prior to you handing me this
2 document that's only signed by you today, is this
3 the first time that this subpoena has been
4 provided to the board? That's all I --

5 MR. CHUNG: Chairman Anderson, yes, because
6 we thought it would not be necessary prior to
7 just now.

8 MR. ADAMS: In terms of the District's
9 response, there's a lot of things discussed I
10 objected to prior to now but just to be clear, at
11 this board hearsay evidence is allowed, what I
12 stated specifically is Mr. Moosally's testimony
13 should not be -- he is excused from any subpoenas
14 before this tribunal so that is the District's
15 position, and again we do acknowledge that
16 hearsay testimony is allowed.

17 CHAIRPERSON ANDERSON: So, with that said,
18 Mr. Chung, do you still need the board to
19 consider subpoenaing Mr. Moosally or is the
20 representation by the government that hearsay is
21 allowed, does that take care of the matter?

22 MR. CHUNG: Yes, sir, it does. I have no

1 objections to that.

2 CHAIRPERSON ANDERSON: So, therefore, you're
3 withdrawing your motion to subpoena?

4 MR. CHUNG: I withdraw the subpoena.

5 CHAIRPERSON ANDERSON: Thank you, sir.
6 What's the third issue, third.

7 MR. CHUNG: The third issue is just a
8 housekeeping matter, as we know, I'd like to do a
9 rule on witnesses on the trial.

10 CHAIRPERSON ANDERSON: I don't even know who
11 the witnesses are. We haven't even gotten there
12 yet, so what witnesses -- what witnesses is it
13 that you plan to call, Mr. Chung?

14 MR. CHUNG: We have four witnesses today, Mr.
15 Chairman: Mr. Wayne June, Mr. Chris Miller,
16 Sasha and Ms. Rivero.

17 CHAIRPERSON ANDERSON: Are they all seated in
18 here today?

19 MR. CHUNG: Yes, they are.

20 CHAIRPERSON ANDERSON: Can they stand so I'll
21 see who they are? All right, and Mr. Adams, who
22 is that -- what witnesses do you plan to call?

1 MR. ADAMS: Your honor, we plan on calling
2 one witness for our main case and another witness
3 rebuttal. Our witnesses will be Investigator
4 Anthony Howze and Investigator, Dorshae Demby.
5 They are both present in the room and I have no
6 objections to the rule of witnesses and ask them
7 both to step out of the room. But yes, we'll
8 have no more than two witnesses.

9 CHAIRPERSON ANDERSON: All right. I'm not
10 seeing -- no members of the board have seen the
11 motion, so -- I'm sorry, there's only one motion.
12 There's only one motion here and the motion is
13 Mr. Alberti's recusal which --

14 MR. ALBERTI: On this case?

15 CHAIRPERSON ANDERSON: -- yes -- which the
16 board has not seen, so Mr. Adams, the government
17 has stated that they have not really seen that
18 motion also. If --

19 MR. ADAMS: If I may state, if it's not
20 properly filed then it doesn't exist, and so,
21 therefore, essentially you have no motion to rule
22 on other than what may have been done orally.

1 MR. CHUNG: Again, I'd like to clarify the
2 record. It's been filed with ABRA. The general
3 counsel's office has it. If you want you could
4 take a little break and read it. It's been sent
5 by e-mail. Mr. Adams was served with it as well.
6 I signed a certificate of service, Mr. Chairman.

7 MR. ADAMS: The District did not receive
8 service.

9 CHAIRPERSON ANDERSON: Where is the
10 certificate of service, Mr. Chung, that you're
11 saying that it was served on the government?

12 MR. CHUNG: It should be on the last page --

13 CHAIRPERSON ANDERSON: I don't have the
14 motion.

15 MR. CHUNG: Oh, I'm sorry.

16 CHAIRPERSON ANDERSON: So if you have a copy
17 of it. I don't have the motion so I don't.

18 MR. CHUNG: I handed it to the --

19 MR. ADAMS: Again, the District has no copy
20 regardless of what's on the certificate of
21 service. I mean, if he hasn't actually seen it,
22 it doesn't matter.

1 CHAIRPERSON ANDERSON: I'm confused, Mr.
2 Chung, so I need you to -- what I have in front
3 of me is a licensee Rule 6-I Recusal Motion and
4 Affidavit and this document is dated April 26,
5 2017, which to the best of my knowledge it's
6 today. Right, so if it was done today it says
7 that a copy of it was served on the government by
8 electronic mail today and the government is Mr.
9 Adams and Mr. Adams has been sitting here so I'm
10 not quite sure if it was served by electronic
11 mail, how could it have been served to him, if
12 he's -- well, at least the board has been here
13 since -- I've been here since 9:00 and I know
14 that Mr. Adams has been here at least since 9:30,
15 at least 9:34 when the board came here and sat on
16 the bench, so I'm not quite sure -- so, you're
17 saying that it was served by electronic mail to
18 him -- to him today?

19 MR. CHUNG: Great questions, Mr. Chairman.
20 So, on April 19th, a motion was filed with this
21 board based upon the hearing that we had, I
22 believe on April 12th, okay? The reason why this

1 is getting filed this morning is there's good
2 cause for me filing this morning. I have been
3 waiting for a decision from this board with
4 regard to recusal for board member Alberti. I
5 have not received that. Therefore, that forced
6 my hand to file this motion this morning with
7 regard to this trial today.

8 CHAIRPERSON ANDERSON: All right. So, the
9 motion that was filed on the 19th, which I have
10 not seen -- you said that a motion was filed
11 asking for recusal from Mr. Alberti on the 19th.
12 I've not seen that. Was that motion filed -- was
13 the government provided a copy of this motion?

14 MR. CHUNG: No, because the government was
15 not a party to the case that was the basis of the
16 foundation for that motion. All the other
17 parties were served: ANC, if you recall the
18 trial we had until 1:30 in the morning, or 1:00
19 a.m. -- ANC 5C --

20 CHAIRPERSON ANDERSON: That was a protest
21 hearing, right.

22 MR. CHUNG: Yes, sir. The genesis of the

1 motion was based upon that protest hearing.

2 CHAIRPERSON ANDERSON: Okay, so you filed a
3 motion after the protest hearing -- after that
4 protest hearing for Mr. Alberti to recuse himself
5 from this case. All right, and I have not seen -
6 - as chair of the board I have not seen the
7 motion.

8 MR. ALBERTI: The other party would have ten
9 days to respond.

10 CHAIRPERSON ANDERSON: I'm just saying I've
11 not seen it and I'm not sure and [Inaudible 1:15]
12 because -- so, I've not seen that motion, all
13 right? So, do you have --

14 MR. CHUNG: I have done motions before this
15 board orally where I've asked for recusal of a
16 board member and the board has not had an issue
17 with it.

18 CHAIRPERSON ANDERSON: I haven't even gotten
19 there yet, sir, so I've not even gotten to having
20 a discussion whether or not Mr. Alberti should or
21 shouldn't recuse himself. I've not gotten there.
22 I'm just saying -- I'm just hearing this orally.

1 You said that you filed a motion and I'm stating
2 to you that, as chair, I have not seen this
3 motion. So, this is the first time it's been
4 brought to our attention, so I need to find out
5 from our legal staff whether or not they received
6 it, and so I was just getting clarification from
7 Mr. -- from the government whether or not the
8 government has seen the motion because I have not
9 seen it. So, in order to have any type of
10 discussion, I need to ascertain that the board
11 has received the motion and for the board and Mr.
12 Alberti to have conversations whether or not,
13 based on your filing, whether or not Mr. Alberti
14 can decide that he needs to recuse and if Mr.
15 Alberti won't recuse himself, whether or not the
16 board needs to vote on it. So, I don't know the
17 basis of the allegation that's in the motion,
18 even to have any type of discussion.

19 MR. ADAMS: That's sort of the nature of the
20 issue. First of all, in terms of a motion, for
21 the record, counsel for the District of Columbia
22 has been on site at the agency since five minutes

1 past nine this morning. I have just looked at my
2 cell phone and noticed that there -- I did
3 receive an e-mail at 9:20 which I did not open at
4 any time because, obviously, we were less than an
5 hour from the scheduled time of the hearing. So,
6 as far as that's concerned, I did receive an e-
7 mail at 9:20 that I did not read. In terms of
8 this just simply being an oral motion regarding
9 recusal, again the issue is that there has been
10 no basis given for Mr. Alberti's recusal.

11 Whatever happened in a separate proceeding is
12 outside of the confines of what this board is
13 looking at today, and to my knowledge I'm not
14 aware of a global of recusals that happen to be
15 at the benefit of certain parties or counselors.

16 But, with that being said, the District
17 objects. We believe that there will be -- we
18 have no -- the board has no basis for their
19 approval of the recusal unless, obviously, member
20 Alberti decides to recuse himself voluntarily.
21 So, I believe that's all that needs to be stated.

22 CHAIRPERSON ANDERSON: Mr. Chung, since I've

1 not seen your motion, what's in the motion?

2 MR. CHUNG: We don't just come up with
3 arguments for recusal just to make it up and say
4 we object, there's a reason and basis for the
5 recusal. That's why you have an affidavit from
6 me, an officer of this court, saying that there's
7 a personal bias with Mr. Alberti and myself. The
8 basis of it is -- it extends beyond the
9 courtroom. Mr. Alberti has been a former member
10 of ANC, his wife is a former member of ANC, I did
11 not realize that until we had the trial on April
12 12th when he was coaching opposing party, he was
13 telling me to stop being an officer of this court
14 and let up on the opposing side and forget my
15 duties as a lawyer. We saw that with this board
16 and then finally it culminated when he accused me
17 of lying about an exhibit not in my possession,
18 where the board members didn't even have that
19 exhibit. That's your bias right there. Mr.
20 Alberti and I -- he gives me constant eye contact
21 -- you guys are not aware of it. We cannot have
22 a fair trial with Mr. Alberti in this room.

1 That's been the basis of the recusal. We don't
2 just make it up and then decide, 'oh, we're going
3 to object to it.' That's why you have a signed
4 affidavit from me under oath as an officer of
5 this court.

6 CHAIRPERSON ANDERSON: Mr. Adams?

7 MR. ADAMS: Mr. Chairman, first of all, we
8 don't have an affidavit at all, so that's the
9 first --

10 CHAIRPERSON ANDERSON: The affidavit was the
11 e-mail to you this morning at 9:20, Mr. Adams.

12 MR. ADAMS: To my knowledge --

13 CHAIRPERSON ANDERSON: You need to check your
14 e-mail.

15 MR. ADAMS: That's in terms of notice to the
16 District but I believe that the board has not yet
17 acknowledged that it's been filed, correct?

18 CHAIRPERSON ANDERSON: No, well, that was
19 just handed to me.

20 MR. ADAMS: Oh, it was just handed to you, so
21 it [Inaudible 1:20]

22 CHAIRPERSON ANDERSON: -- handed to me yet.

1 MR. ADAMS: Again, looking at the rules for
2 this -- under Rule 1716, all motions have to be
3 done within seven days, or, sorry, have to be
4 done and provided to this board prior to the
5 proceedings and normally such motions are
6 required to be delivered within seven days prior
7 to there being a proceeding before the board;
8 however, with that being said, and obviously I
9 understand that's technical in nature. Again,
10 obviously, the route, the history of the various
11 tribunals, people may believe that someone --
12 they didn't agree with the position someone had
13 at a certain -- at a certain body. Again, based
14 upon the statements that were made there's five
15 members of this board. There hasn't been
16 anything that was mentioned in the statement by
17 Mr. Chung by opposing counsel that would
18 necessarily give the board any emphasis or
19 necessity to change its course, because if that's
20 the case, then for any matter which Mr. Chung is
21 involved or has any interest, in theory Mr. Chung
22 is stating that he would want to have a recusal.

1 Again, I mean -- people have differences in
2 various proceedings, whether it be in court or in
3 different -- or in a body like this. There
4 simply isn't anything that's been strong enough
5 that's presented.

6 CHAIRPERSON ANDERSON: Mr. Chung?

7 MR. CHUNG: I ask that the board -- point the
8 board to an actual -- the law that actually
9 governs this topic: DCMR 2837.1 provides that an
10 administrative law judge shall recuse himself or
11 herself in accordance with the standards
12 applicable to the judges of the superior court of
13 the District of Columbia unless a different
14 standard is required under the authority of the
15 Office of Administrative Hearings Act. The Act
16 does not require a different standard.
17 Consequently, we go to the superior court Rule
18 63-I. It provides whenever a party to any
19 proceeding makes and files a sufficient affidavit
20 -- which has been done here -- that the judge
21 before whom the matter is to be heard, has a
22 personal bias or prejudice either against the

1 party or in favor of any adverse party such as
2 shall proceed no further therein, but another
3 judge shall be assigned to hear such hearings.
4 Here we have a quorum. We lose nothing by having
5 Mr. Alberti recuse himself. In fact, it doesn't
6 taint the proceedings; it keeps it safe. This is
7 not a hard decision for this board.

8 MR. ADAMS: Mr. Chairman, I'll very simply
9 state the rule that was quoted by Mr. Chung
10 applies to the Office Administrative Hearings.
11 This body is not the Office of Administrative
12 Hearings.

13 CHAIRPERSON ANDERSON: I'm familiar because
14 I'm familiar with the rules, but I guess what I'm
15 saying, though, Mr. Chung, who's decision it is
16 that there's a personal bias? I mean, can
17 someone just make an allegation to say that the
18 person has a personal bias or -- I'm just asking
19 the question -- or is there some finding, because
20 all I'm hearing, anyone can say that Mr.
21 Anderson, chair of the board, has a personal bias
22 against this person. So, where is this personal

1 bias? I mean, in the sense that -- who makes the
2 decision whether or not there's a personal bias?

3 MR. CHUNG: Who makes the decision is the
4 tribunal. Your colleagues and the board members
5 make this decision. There's case law in Re Evans
6 411-A.2d-984 in the court of appeals case. It's
7 been cited in the April 19 filing and the reasons
8 and justifications behind my request for this
9 recusal are based on case law. It's not because
10 'oh, I don't like the color of your shirt today.'

11 MR. ADAMS: Mr. Chairman, at this point I
12 think it's been argued. Again, you can look at
13 his affidavit to determine -- the board itself
14 would have to determine -- whether or not it's
15 sufficient and the board itself can determine how
16 to proceed, and whether or not there's sufficient
17 bias or inappropriate bias for member Alberti and
18 whether to proceed with the full contingent of
19 board members.

20 CHAIRPERSON ANDERSON: Do you have any final
21 comments, Mr. Chung?

22 MR. CHUNG: I ask that the board take a short

1 recess and look at my April [Inaudible 1:25].
2 It sheds more light onto it. It's only maybe a
3 three to four page motion before this tribunal.
4 It will shed more light into it and give you more
5 facts as to what's going on, because we're both
6 being asked questions. I presented to you. Mr.
7 Adams seems to not know the facts because he was
8 not a part of that hearing, so if Mr. Adams would
9 like to read it and then change his position, I'm
10 fine with that, as well.

11 MR. ADAMS: Actually, no, that's not
12 necessary, that's a separate proceeding. The
13 April 19th is a separate proceeding and I'm not
14 going to adopt what occurred in a separate
15 proceeding into this proceeding. I don't think
16 that's necessary. He's had time to properly file
17 a motion for this case, simply put, and the board
18 should -- the board's decision should be based
19 upon what arguments have been made today. I
20 don't even have this affidavit. I guess I can
21 look in my emails but in terms of affidavits you
22 can decide what to do in this case only.

1 CHAIRPERSON ANDERSON: All right, as the
2 chairperson of the Alcoholic Beverage Control
3 Board for the District of Columbia and in
4 accordance with Section 405 of the Open Meetings
5 Amendment Act of 2010, I move that the ABC board
6 hold a closed meeting for the purpose of seeking
7 legal advice from our counsel on case #15-CMP-
8 00697, Capitale, per Section 405(b)(4) of the
9 Open Meetings Amendment Act of 2010. Is there a
10 second?

11 MR. SHORT: Second.

12 CHAIRPERSON ANDERSON: Mr. Short has seconded
13 the motion. I will now take a roll call vote on
14 the motion before us now that it has been
15 seconded. Mr. Perry?

16 MR. PERRY: I agree.

17 CHAIRPERSON ANDERSON: Mr. Alberti?

18 MR. ALBERTI: I agree.

19 CHAIRPERSON ANDERSON: Mr. Short?

20 MR. SHORT: I agree.

21 CHAIRPERSON ANDERSON: Mr. Silverstein?

22 MR. SILVERSTEIN: I agree.

1 CHAIRPERSON ANDERSON: As it appears that the
2 motion has passed, I hereby give notice that the
3 ABC board will hold a closed meeting in the ABC
4 board conference room pursuant to the Open
5 Meetings Amendment Act of 2010. The board is in
6 recess. Thank you very much.

7 [Off the Record.]

8 [On the Record.]

9 CHAIRPERSON ANDERSON: We're back on the
10 record. The conversation that we had prior to
11 our break to consult with legal on a motion that
12 was filed by counsel in case -- I don't even know
13 the case but I'm looking at the motion and a
14 motion was filed in a protest hearing regarding
15 an establishment called Sip and within that
16 matter -- a protest hearing where counsel was
17 being represented that protest hearing a motion
18 was filed requesting that board member Alberti
19 disqualify himself from that hearing and I think
20 that there is a line basically stating that board
21 member Alberti disqualified himself from all
22 future proceedings where Counsel is representing

1 the establishment. That's the motion. Any case
2 where counsel is representing the licensee that
3 board member should disqualify himself. That was
4 the motion that was filed. There was no specific
5 motion filed in this particular case requesting
6 that board member Alberti disqualify himself from
7 participating in this matter. You are correct
8 that there is no specific guidance whether or not
9 a board member should disqualify himself and I
10 remember one of the first times when I became a
11 member of this board an issue was raised
12 regarding the standards for disqualification and
13 so one would look at the section for District of
14 Columbia judges because there's nothing out there
15 that says what an ABRA board member should
16 disqualify himself. I believe in this particular
17 case that the motion stating that Mr. Alberti
18 should disqualify himself in all matters -- all
19 future matters that counsel is a party at -- I
20 think that's too broad, it's not specific to this
21 case. I don't think that there's any showing
22 that, at least in this particular case, that

1 board member Alberti should disqualify himself,
2 so with that said I make a motion to the board
3 that this request be denied. Is there a second?

4 MR. PERRY: Second.

5 CHAIRPERSON ANDERSON: Mr. Perry has seconded
6 the motion. All those in favor say aye. (Chorus
7 of ayes.) All those opposed? Any abstention?

8 MR. ALBERTI: Abstaining.

9 CHAIRPERSON ANDERSON: The matter passed 4-
10 zero-one with Mr. Alberti abstaining from the
11 decision. So, hearing no other preliminary
12 matters, does the government wish to make an
13 opening statement? Regarding the rule on
14 witnesses, I would request then that all of the
15 witnesses who were identified be excused from the
16 room, inclusive of the government's witness and
17 the petition's witnesses. You know who you are.
18 If you're going to be a witness in this case,
19 please step out of the room.

20 Does the government wish to make an opening
21 statement?

22 MR. ADAMS: Yes, Mr. Chairman, brief

1 indulgence by the board members please. Mr.
2 Chairman --

3 CHAIRPERSON ANDERSON: Let's hold on for one
4 minute. We're in recess for one minute. I
5 realize that none of us have any information on
6 this case. I apologize, Mr. Adams, and I
7 apologize to the parties. We're now back on the
8 record. Does the government wish to make an
9 opening statement?

10 MR. ADAMS: Yes, Mr. Chairman. This actually
11 is a very simple, straightforward case. The fact
12 of the matter is that the licensee, Capitale,
13 allowed the consumption and service and sale of
14 alcoholic beverages beyond the hours of their
15 licensed sales. Two facts are not in dispute
16 whatsoever: That the license for Capitale on the
17 day involved, which was September 21, 2015,
18 limited sales and the consumption of alcoholic
19 beverages to 2:00 a.m.; also the other thing that
20 is not in dispute is that this establishment
21 allows its operation to continue 90 minutes
22 afterwards, and it was 3:30 a.m. on that day.

1 What the evidence will show the board is that
2 three investigators from the Alcoholic Beverage
3 Regulation Administration went to the
4 establishment, entered the establishment after
5 2:00 a.m. The evidence will show that the
6 establishment was filled at the time and the
7 record now has also showed that the investigators
8 both observed the ordering, the service, the sale
9 and consumption of alcoholic beverages at the bar
10 area of this establishment, in particular the
11 lead investigator, in this case, Mr. Howze,
12 observed one of the patrons served after 2:00
13 a.m.

14 The evidence will also show that at the time
15 the establishment was in full operations, in
16 terms of both the service and sale of alcohol.
17 Evidence will also show that at the time that the
18 investigators were there that the establishment
19 was providing bottles of alcoholic beverages, in
20 this case champagne bottles that had sparklers.
21 And all this occurred after 2:00 a.m. which is
22 the cut-off for sales and service and consumption

1 of alcoholic beverages for the establishment.

2 There is some context that you will hear from
3 the witnesses as well. There was a musical
4 performance by a well-known artist at the time
5 that this occurred.

6 Simply stated, once the District establishes
7 that consumption, sales and service occurred
8 after 2:00 a.m. there will be a prima facie basis
9 where the District will have proved its case.
10 So, with that being stated, that is the basis of
11 the District's motion -- I'm sorry -- the
12 District's case. In the end, after you do hear
13 all the facts within the case we believe that
14 there's only one reasonable conclusion that this
15 administrative body will have, which will be to
16 find a violation against this establishment.

17 CHAIRPERSON ANDERSON: Mr. Chung, do you wish
18 to make an opening statement at this juncture?

19 MR. CHUNG: Yes. The licensee denies that
20 they served, sold or permitted consumption of
21 alcoholic beverages after the cutoff timeline. I
22 just ask the board, read the investigator's

1 report and focus on that instead of all the
2 nonsense that's going to happen today, but focus
3 on this report. It's very important. This
4 report speaks for itself.

5 CHAIRPERSON ANDERSON: All right, thank you,
6 Mr. Chung. All right, does the government wish
7 to call its first witness?

8 MR. ADAMS: Yes, our first witness is going
9 to be Investigator Howze who is sitting outside.

10 CHAIRPERSON ANDERSON: Mr. Howze, can you
11 raise your right hand, please? Do you swear or
12 affirm to tell the truth and nothing but the
13 truth?

14 INVESTIGATOR HOWZE: I do.

15 CHAIRPERSON ANDERSON: Have a seat, sir.

16 MR. ADAMS: Good morning, Mr. Howze.

17 INVESTIGATOR HOWZE: Good morning.

18 MR. ADAMS: Could you please state and spell
19 your name for the record?

20 INVESTIGATOR HOWZE: A-N-T-H-O-N-Y, H-O-W-Z-
21 E.

22 MR. ADAMS: And, Mr. Howze, are you employed

1 by the District of Columbia government?

2 INVESTIGATOR HOWZE: I am, by ABRA --
3 Alcoholic Beverage Regulation Administration.

4 MR. ADAMS: And what's your role with ABRA?

5 INVESTIGATOR HOWZE: I'm an investigator.

6 MR. ADAMS: All right, and how long have you
7 been an investigator?

8 INVESTIGATOR HOWZE: A year and a half.

9 MR. ADAMS: And when did approximately begin?

10 INVESTIGATOR HOWZE: July 27, 2015.

11 MR. ADAMS: So, Mr. Howze, turn your
12 attention to September 21st, 2015. Were you on
13 duty?

14 INVESTIGATOR HOWZE: I was on duty, sir.

15 MR. ADAMS: And what were your duties on that
16 day?

17 INVESTIGATOR HOWZE: I believe that day was a
18 Sunday. Usually, we compile a list of
19 establishments to be monitored for possible ABRA
20 violations.

21 MR. ADAMS: And so once you compiled the list
22 what did you do?

1 INVESTIGATOR HOWZE: I went to the
2 establishments on the compiled list.

3 MR. ADAMS: And were there several
4 establishments or just only one establishment?

5 INVESTIGATOR HOWZE: There were about five
6 establishments: Capitale, Barcode, Dirty
7 Martini, Eden just off the top.

8 MR. ADAMS: And were those establishments --
9 to your recollection do certain establishments
10 operate during the evenings on Sundays?

11 INVESTIGATOR HOWZE: I'm sorry?

12 MR. ADAMS: Do certain establishments operate
13 during the evenings on Sundays?

14 INVESTIGATOR HOWZE: Correct.

15 MR. ADAMS: And is Capitale one of them?

16 INVESTIGATOR HOWZE: Yes, it is.

17 MR. ADAMS: So, on the morning of September
18 21st, did you have an occasion to be at Capitale?

19 INVESTIGATOR HOWZE: I was at Capitale on
20 September 21, 2015.

21 MR. ADAMS: At approximately what time?

22 INVESTIGATOR HOWZE: I entered the

1 establishment at 2:05 a.m. approximately.

2 MR. ADAMS: Once you entered the
3 establishment, can you tell the board what did
4 you observe?

5 INVESTIGATOR HOWZE: Once you walk into
6 Capitale, once you walk past the walk area,
7 you're led to a foyer area. The foyer area
8 consists of a coat check, a small couch and a
9 mini curtain or backdrop where patrons can take
10 pictures or hang out there. Once you actually
11 walk into the establishment, the establishment is
12 actually broken up into two parts. Directly to
13 your left when you walk in is the bar area. The
14 bar area is basically from five feet before you
15 walk into the establishment basically all the way
16 back until you get to the back of the
17 establishment. On the other part of the
18 establishment is the table and couch area or "the
19 dance floor." What I observed when I walked in
20 at 2:05 a.m. were one male patron specifically at
21 the bar drinking an alcoholic beverage. Once I
22 observed that, I walked to him and stood next to

1 him and actually watched him consume his whole
2 alcoholic beverage. During that time I actually
3 witnessed a bottle girl come out of the manager's
4 closet, or manager's office, and in her hands she
5 had two bottles of champagne accompanied with
6 fire sparklers and she delivered to the table on
7 the other side of the establishment.

8 MR. ADAMS: So, now you state that you
9 entered the establishment and you went to the bar
10 area, is that correct?

11 INVESTIGATOR HOWZE: Correct.

12 MR. ADAMS: So, how many people were in the
13 bar area?

14 INVESTIGATOR HOWZE: Roughly I would say
15 between 20 or 30 people.

16 MR. ADAMS: And when you say people, were
17 they customers or were they staff?

18 INVESTIGATOR HOWZE: They were customers.

19 MR. ADAMS: And so what were they doing at
20 the bar?

21 INVESTIGATOR HOWZE: I specifically remember
22 a bartender pouring alcoholic beverages and I

1 specifically remember observing a male patron
2 consuming alcoholic beverages that the bartender
3 had poured for him.

4 MR. ADAMS: In terms of the other patrons,
5 were the other patrons, can you tell us whether
6 or not they were ordering drinks as well?

7 INVESTIGATOR HOWZE: I can't recall that far
8 back.

9 MR. SILVERSTEIN: I'm sorry, can you repeat
10 the question? I didn't hear that.

11 MR. ADAMS: The question was, in terms of
12 other patrons, did you observe whether or not
13 they were ordering alcoholic beverages?

14 INVESTIGATOR HOWZE: I can't speak for the
15 other patrons. I do remember the one patron I
16 observed ordering an alcoholic beverage.

17 MR. ADAMS: In terms of -- how many
18 bartenders were at the establishment at that
19 time?

20 INVESTIGATOR HOWZE: Three or four bartenders
21 were behind the bar at that time.

22 MR. ADAMS: And, do you recollect what they

1 were doing at that time?

2 INVESTIGATOR HOWZE: I specifically remember
3 a female bartender pouring a drink, an alcoholic
4 beverage.

5 MR. ADAMS: And what were the other
6 bartenders doing at that time?

7 INVESTIGATOR HOWZE: I can't recall but I
8 would assume actually attending to customers or
9 patrons in the establishment.

10 MR. ADAMS: Now, in terms of this one
11 customer -- first of all, how long were you at
12 the establishment?

13 INVESTIGATOR HOWZE: I was at the
14 establishment for roughly 20 minutes -- 20 to 30
15 minutes.

16 MR. ADAMS: So, if you entered the
17 establishment at 2:05, you were there at the
18 establishment until approximately 2:25 to 2:30,
19 is that safe to say?

20 INVESTIGATOR HOWZE: Correct.

21 MR. ADAMS: All right. So, in terms of this
22 -- of the patron that you observed, can you

1 provide a description?

2 INVESTIGATOR HOWZE: Black male patron, I
3 would guess between the age of 21 and 30.

4 MR. ADAMS: And by the way were you by
5 yourself at the time?

6 INVESTIGATOR HOWZE: No, Investigator Demby
7 was with me also.

8 MR. ADAMS: And where were you in proximity
9 to this patron?

10 INVESTIGATOR HOWZE: Directly next to him.

11 MR. ADAMS: When you say directly next to
12 him, were you within a foot of him or two feet?
13 How far away?

14 INVESTIGATOR HOWZE: Within a foot I would
15 say.

16 MR. ADAMS: Okay, so what did you -- did you
17 hear him -- did you hear anything from this
18 customer?

19 INVESTIGATOR HOWZE: Not that I recall.

20 MR. ADAMS: And why not?

21 INVESTIGATOR HOWZE: The music was extremely
22 loud. They actually had a rapper that night

1 performing or entertaining, The Game.

2 MR. ADAMS: Who's The Game?

3 INVESTIGATOR HOWZE: The Game is a west coast
4 rapper.

5 MR. ADAMS: And actually the establishment --
6 can you describe, was it -- how many people were
7 at the establishment once you entered?

8 INVESTIGATOR HOWZE: I don't recall the exact
9 number, but I would say it was at capacity.

10 MR. ADAMS: Was it easy for you to walk into
11 the establishment?

12 INVESTIGATOR HOWZE: To walk in the
13 establishment?

14 MR. ADAMS: Walk in and around the
15 establishment.

16 INVESTIGATOR HOWZE: Not around the
17 establishment but --

18 MR. ADAMS: And why not?

19 INVESTIGATOR HOWZE: Like I said it was at
20 capacity.

21 MR. ADAMS: So, you state that you're
22 standing within a foot of this patron. What did

1 you observe in terms of what the patron did?

2 INVESTIGATOR HOWZE: He ordered an alcoholic
3 beverage.

4 MR. ADAMS: Right.

5 INVESTIGATOR HOWZE: Once he got his
6 alcoholic beverage he consumed his alcoholic
7 beverage.

8 MR. ADAMS: Okay. At a certain point you
9 stated that you saw other services taking place.

10 INVESTIGATOR HOWZE: Correct.

11 MR. ADAMS: Is that what you described
12 regarding bottle girls?

13 INVESTIGATOR HOWZE: Bottle girls, correct.

14 MR. ADAMS: How long was it before you saw a
15 bottle girl?

16 INVESTIGATOR HOWZE: So, if I entered at 2:05
17 I stood next to the patron probably like around
18 2:06 - 2:07.

19 MR. CHUNG: Mr. Chairman, I'm going to object
20 to this line of questioning. Again, the reason I
21 asked the board to focus on this report is that
22 this report only talks about one person.

1 MR. ADAMS: It's a speaking objection, the
2 witness is on the stand.

3 MR. CHUNG: So, what's going on here is
4 introducing evidence and what is going on here?
5 Are we talking about one person from 2:01 to 2:06
6 in this report. That is the basis of this
7 allegation and the reason why we're here today.

8 MR. ADAMS: If the objection is on relevance,
9 I believe that this is a relevant grounds in
10 terms of service that obviously occurred after
11 2:00 a.m.

12 CHAIRPERSON ANDERSON: But I'm not in the
13 report and this is a witness who wrote the report
14 who is testifying on his recollection from the
15 event, so if it's the relevance, I'm going to --

16 MR. CHUNG: None of this information he's
17 presenting before the board today is in this
18 report.

19 CHAIRPERSON ANDERSON: Mr. Chung, on cross
20 examination you'll have an opportunity to cross
21 examine him and ask him whether or not -- I'm not
22 in the report, I've not read the report, so if

1 you have read the report, if it's not in there,
2 then that's ripe for cross examination to ask him
3 if it was that important why did he not place it
4 in the report. So, I'm going to overrule the
5 objection. Go ahead, Mr. Adams.

6 MR. ADAMS: Mr. Howze you stated -- I guess
7 my question was how long was it before you saw --
8 as you mentioned -- bottle girls. Can you please
9 answer that question?

10 INVESTIGATOR HOWZE: Roughly five minutes, I
11 seen her after I observed the patron consuming
12 alcohol.

13 MR. ADAMS: And I believe your testimony was
14 you saw the patron until approximately 2:07, is
15 that correct?

16 INVESTIGATOR HOWZE: Correct, well, yeah.

17 MR. ADAMS: All right, and so what exactly --
18 what were they carrying?

19 INVESTIGATOR HOWZE: She was carrying two
20 bottles of champagne, accompanied with one or two
21 fire sparklers.

22 MR. ADAMS: How do you know this to be

1 champagne?

2 INVESTIGATOR HOWZE: From my experience, I
3 know it was a champagne bottle -- it was a Moet
4 bottle, two Moet bottles.

5 MR. ADAMS: All right. And what else did you
6 observe about this -- about this -- about the
7 person who served the champagne bottles?

8 INVESTIGATOR HOWZE: She took the bottles to
9 a table and when she returned she did not have
10 anything in her hand.

11 MR. ADAMS: And speaking of which in terms of
12 the patron that you stood next to, you state that
13 he consumed the beverage. How did you know that
14 to be an alcoholic beverage?

15 INVESTIGATOR HOWZE: I saw the bartender pour
16 his beverage.

17 MR. ADAMS: All right, thank you. And after
18 you made the observation of the bottle girl
19 making a service, what happened then?

20 INVESTIGATOR HOWZE: Say that one more time
21 for me.

22 MR. ADAMS: What happened after you observed

1 the bottle girl?

2 INVESTIGATOR HOWZE: After she returned I
3 then put my attention to the bartender that was
4 in front of me. I identified myself as an ABRA
5 investigator and asked to speak to an ABC manager
6 or owner.

7 MR. ADAMS: What happened when you -- what
8 was her response?

9 INVESTIGATOR HOWZE: She really didn't
10 respond, she just went and -- she actually turned
11 around and tapped Mr. Alexander Zivkovic.

12 MR. ADAMS: And who is Alexander Zivkovic?

13 INVESTIGATOR HOWZE: He was the ABC manager
14 on duty tht night.

15 MR. ADAMS: And when you say she turned
16 around, can you describe for the board what you
17 mean?

18 INVESTIGATOR HOWZE: So, she was leaning over
19 to the bar trying to speak to me -- like I said
20 it was loud in there -- once she heard what I
21 said she actually turned around and got the
22 attention of Mr. Zivkovic.

1 MR. ADAMS: So, how far was Mr. Zivkovic from

2 --

3 INVESTIGATOR HOWZE: If I had to estimate, I
4 would say within three to five feet of her.

5 MR. ADAMS: All right, so once she got Mr. --
6 so, what was your observation regarding Mr.
7 Zivkovic at that time?

8 INVESTIGATOR HOWZE: My observation is that
9 he observed patrons consuming alcohol. Well,
10 that patron consuming alcohol and the bottle girl
11 taking the bottles to the table.

12 MR. ADAMS: So, what happened once the
13 bartender got the ABC manager's attention?

14 INVESTIGATOR HOWZE: I met him in his office.
15 I identified myself as an ABRA investigator. He
16 identified himself as the ABC manager and showed
17 me his card -- showed me his identification. I
18 then asked him was he aware of the hours for sale
19 for that establishment and he notified me that he
20 was aware that alcoholic sales are to cease at
21 2:00 a.m. and then I notified him that they would
22 be in violation of selling alcohol outside of

1 their board-approved hours of sale. Further
2 during the conversation, I advised him that I
3 would be back to receive the surveillance footage
4 from the night, and I gave him the time between
5 1:50 a.m. to 2:30 a.m. Mr. Zivkovic said he
6 understood but he did advise me that he would not
7 be in the establishment when I returned on
8 Thursday, the 25th of September.

9 MR. ADAMS: All right. So, in terms of your
10 conversation with the ABC manager, did the topic
11 come up regarding whether or not people were
12 actually receiving alcoholic beverage service at
13 that time?

14 INVESTIGATOR HOWZE: Yes, we did speak about
15 that.

16 MR. ADAMS: And what did he say?

17 INVESTIGATOR HOWZE: He basically -- he
18 basically notified me that he was aware of
19 alcohol sales being provided during the time
20 after 2:00 a.m.

21 MR. ADAMS: In terms of your investigation or
22 the parts of your investigation on that day, is

1 that the end of -- does that conclude your
2 activities on that day?

3 INVESTIGATOR HOWZE: My conversation with Mr.
4 Zivkovic?

5 MR. ADAMS: Yes.

6 MR. CHUNG: I'm going to object to any
7 testimony provided. I understand the rules of
8 this board, but I'm going to object to
9 Investigator Howze testifying on behalf of Mr.
10 Sasha -- that's his name. He's here today. He
11 is here today to testify as to what he told Mr.
12 Howze.

13 CHAIRPERSON ANDERSON: Well, I'm going -- and
14 the reason I'm going to overrule the objection,
15 the witness is testifying based on the
16 conversation he had with someone in doing his
17 position. I don't know who this other person is.
18 It's not clear to me that the government is going
19 to call him as a witness, so are you saying that
20 the government should wait to see whether or not
21 you call a witness and then they'll cross examine
22 them? So, I'm overruling the objection.

1 MR. ADAMS: All right, so after you had the
2 conversation with Mr. Zivkovic, did that conclude
3 your investigation on that day?

4 INVESTIGATOR HOWZE: Actually I told Mr.
5 Zivkovic that alcohol sales cannot be provided
6 with fire sparklers and they cannot accompany the
7 bottles to tables and you also cannot sell after
8 the allotted time on your license.

9 MR. ADAMS: Okay, and so what happened after
10 that?

11 INVESTIGATOR HOWZE: After that, I actually
12 went back to where I was standing and stayed for
13 probably like another ten minutes. During that
14 time the lights of the establishment came on and
15 several patrons exited the establishment.

16 MR. ADAMS: And do you know why that
17 occurred?

18 INVESTIGATOR HOWZE: I think a notification
19 was made that alcohol sales were over. I think
20 that prompted patrons to actually leave the
21 establishment during that time.

22 MR. ADAMS: Approximately what time was this?

1 INVESTIGATOR HOWZE: 2:15.

2 MR. ADAMS: So, after you observed the
3 patrons leaving did you do anything else that
4 evening at Capitale?

5 INVESTIGATOR HOWZE: No.

6 MR. ADAMS: So, what else did you do as a
7 part of this investigation?

8 INVESTIGATOR HOWZE: I returned to Capitale
9 on, I believe, Thursday, September 25, 2015,
10 identified myself as an ABRA investigator, had a
11 conversation with ABC manager, Susanna Rivero.
12 During that conversation I advised her of the
13 violation that occurred on September 21, 2015.
14 She insured me that she was aware of the
15 violation. During that time she helped me with
16 my regulatory inspection. After that, we had a
17 brief conversation about sparklers being
18 accompanied with bottles. I believe she asked
19 why that is. That's all I can recall about that
20 visit.

21 MR. ADAMS: Did you obtain any information or
22 any material when you visited her on the 25th?

1 INVESTIGATOR HOWZE: I actually picked up the
2 video that I requested that Sunday from Mr.
3 Zivkovic. He actually had Ms. Rivero give me the
4 video for that night.

5 MR. ADAMS: And what did you do with that
6 video footage?

7 INVESTIGATOR HOWZE: I retrieved it, brought
8 it back to ABRA and reviewed the video.

9 MR. ADAMS: And once you reviewed it what did
10 you observe?

11 INVESTIGATOR HOWZE: From the times of 2:01
12 to 2:07 a.m. the patron that I observed consuming
13 alcohol was, indeed, consuming --

14 MR. CHUNG: Mr. Anderson, I'm going to
15 object. The video is part of the exhibits in the
16 report. The video can speak for itself. Where
17 is it?

18 MR. ADAMS: Again, he can speak to his
19 observations and video confirmation.

20 MR. CHUNG: The best evidence rule -- based
21 on the best evidence rule, Chairman Anderson, you
22 look at the video. You don't take someone's

1 summary of the video. That's why we have video.
2 As this board knows, we've had many mistakes with
3 people trying to summarize video.

4 CHAIRPERSON ANDERSON: It's my understanding
5 from what I'm listening, this is the investigator
6 who wrote a report, and this is the investigator
7 who went to the establishment and the
8 investigator is giving us his recollection of
9 what he observed and what he say, and again, sir,
10 cross examination you will have cross examination
11 to cross him and for closing -- that's better for
12 closing for you to say if the government decided
13 not to produce a video, then you can make closing
14 arguments and have the board draw whatever
15 inferences that they want to draw if this
16 information is not presented. So, I think that's
17 more appropriate for us to do a cross and in your
18 closing.

19 MR. CHUNG: Chairman Anderson, I'm going to
20 put on the record that we object to Mr. Howze
21 testifying as to what the video says. This board
22 has dinged licensees over and over again for not

1 showing the video or having missing video with
2 the assumption that the video hurts them.
3 Counsel here had plenty of time, as he said six
4 months, to produce this video to show exactly
5 what Mr. Howze is talking about. It's not here.
6 There must be a reason why it's not here.

7 CHAIRPERSON ANDERSON: And that's why -- and
8 that's why I said, Mr. Chung, that is an
9 appropriate argument for closing. I don't know -
10 - right now, I don't know if the government is
11 going to produce the video. I don't know. Maybe
12 they will produce --

13 MR. CHUNG: He's already said he's not
14 producing a video.

15 CHAIRPERSON ANDERSON: Well, I don't recall
16 hearing that. I wasn't -- so --

17 MR. ADAMS: It's not part of the record.

18 CHAIRPERSON ANDERSON: So, I've not seen -- I
19 don't know what documents that counsel is going
20 to put forward and as I said, Mr. Chung, the
21 arguments that you're making right now, they're
22 so appropriate for closing because, again, you

1 make the arguments in closing, you have cross
2 examination, you can ask him about it. In
3 closing. If the government decides not to
4 present the documents, then you need to tell the
5 board -- and I know that as the learned counsel
6 you are you will basically tell the board to draw
7 whatever conclusions it will or will not if the
8 document you think is important is not here. So,
9 that's more appropriate for cross examination,
10 sir, so again I'm overruling the objection and go
11 ahead, Mr. Adams.

12 MR. ADAMS: Before I -- Mr. Chairman, before
13 I go back to Mr. Howze, can there be an
14 instruction by the board regarding the form of
15 objections? So far, we're hearing speaking
16 objections from counsel, such speaking objections
17 tend to taint the record by potentially being
18 seen as either testimony or potentially being the
19 witness' testimony itself. Either a matter is
20 irrelevant or whatever the objection is, normally
21 in court in other tribunals you state the
22 objection, you state the basis and that's about

1 it. I'm not understanding why we're having
2 speaking objections and it's considered to be
3 inappropriate.

4 CHAIRPERSON ANDERSON: I will have both
5 counsels, and both counsels are attorneys, that
6 if you are making an objection that you give us a
7 reason for -- you first of all tell us the reason
8 for your objection. I mean, what category, why
9 you're objecting, and then I will ask for
10 explanation, so I'll just put both counsel on
11 record that this is what I'm expecting from them
12 moving forward when it comes to objections.

13 MR. ADAMS: Mr. Howze, now you state that you
14 said that you reviewed the videotape and you
15 stated -- I believe that you were stating that
16 you saw the gentleman -- a gentleman at the bar
17 on the videotape. Is that correct?

18 INVESTIGATOR HOWZE: Correct.

19 MR. ADAMS: What else did you observe from
20 reviewing the videotape?

21 INVESTIGATOR HOWZE: Like I stated, I did see
22 the bottle girls delivering bottles to tables

1 with fire sparklers and that's also in the
2 report, and I noted the time of exactly when in
3 the report.

4 MR. ADAMS: And to your recollection, was it
5 consistent or inconsistent with your
6 observations?

7 INVESTIGATOR HOWZE: Pretty consistent.

8 MR. ADAMS: Now you stated that you had a
9 report, correct?

10 INVESTIGATOR HOWZE: Correct.

11 MR. ADAMS: I would like to present to the
12 witness, and I'll provide copies to counsel,
13 what's marked as --

14 MR. CHUNG: I have a copy.

15 MR. ADAMS: -- okay, as District's Exhibit A,
16 which is the case report. Mr. Howze, do you
17 recognize that document?

18 INVESTIGATOR HOWZE: This is my investigative
19 report.

20 MR. ADAMS: And how do you recognize it as
21 your report?

22 INVESTIGATOR HOWZE: It has my name on it and

1 I typed it.

2 MR. ADAMS: Turn to page 5 of this report.

3 Is that your signature?

4 INVESTIGATOR HOWZE: Yes.

5 MR. ADAMS: So, you signed this on February 9,
6 2016?

7 INVESTIGATOR HOWZE: Correct.

8 MR. ADAMS: And along with -- now turn to
9 page 2 of your investigative report. At the
10 bottom there's an area that speaks to exhibits,
11 is that correct?

12 INVESTIGATOR HOWZE: Correct.

13 MR. ADAMS: Now turn to Exhibit #1, is
14 Exhibit #1 attached?

15 INVESTIGATOR HOWZE: Yes.

16 MR. ADAMS: And what is that?

17 INVESTIGATOR HOWZE: A copy of Mr. Zivkovic's
18 license and ABC manager's license.

19 MR. ADAMS: And what is Exhibit #2?

20 INVESTIGATOR HOWZE: Exhibit #2 is Capitale's
21 ABC license -- a copy of Capitale's ABC license.

22 MR. ADAMS: And Exhibit #3?

1 INVESTIGATOR HOWZE: It's my regulatory
2 inspection.

3 MR. ADAMS: I notice there's a line that
4 states Exhibit #4. What's Exhibit #4?

5 INVESTIGATOR HOWZE: A copy of Capitale's
6 video data 9/21/2015.

7 MR. ADAMS: In terms of your case report with
8 exhibits #1 through #3 is it a true and accurate
9 representation of your investigation report?

10 INVESTIGATOR HOWZE: Correct.

11 MR. ADAMS: Mr. Chairman, I would like to
12 move into evidence District's Exhibit A which is
13 the case report with exhibits #1 through #3 into
14 evidence?

15 CHAIRPERSON ANDERSON: Mr. Chung?

16 MR. CHUNG: No objection.

17 CHAIRPERSON ANDERSON: So moved.

18 MR. ADAMS: Now, you stated that in terms of
19 the videotape, now Mr. Howze why isn't the
20 videotape attached or here? Or can you explain
21 why the videotape is not here? Or, why do you
22 not have the videotape at this time?

1 INVESTIGATOR HOWZE: When I turned in my
2 investigative report, I turned in all of my
3 exhibits. So, it goes to the supervisor, to the
4 chief and I'm not sure why it's not here,
5 honestly.

6 MR. ADAMS: All right, now have you been able
7 to actually review the videotape, video footage
8 today?

9 INVESTIGATOR HOWZE: No, I haven't.

10 MR. ADAMS: And why not?

11 INVESTIGATOR HOWZE: I didn't try to.

12 MR. ADAMS: And have you had any issues with
13 reviewing the video footage?

14 INVESTIGATOR HOWZE: Me, myself, personally
15 no, but I did have an investigator try to bring
16 it up on his computer.

17 MR. ADAMS: And what happened?

18 INVESTIGATOR HOWZE: I don't think it read.

19 MR. ADAMS: Is there anything -- from the
20 basis of your testimony, is there anything that's
21 on the video, on the video testimony that's --
22 sorry, for the video coverage that's any

1 different than from what you described?

2 INVESTIGATOR HOWZE: I documented what I
3 observed on the video in my investigative report.

4 MR. ADAMS: Now, in terms of -- and in your
5 testimony you spoke to the fact that The Game was
6 performing, you spoke to the crowd. Are all of
7 those details in your investigative report?

8 INVESTIGATOR HOWZE: No, it is not.

9 MR. ADAMS: And why not?

10 INVESTIGATOR HOWZE: I didn't think it was
11 relevant to the fact that they were selling
12 alcohol outside of their board-approved hours of
13 sale.

14 MR. ADAMS: So, based upon your experience as
15 an investigator, based upon what are the contents
16 of your report, do you believe that the board has
17 a basis to find a violation?

18 INVESTIGATOR HOWZE: I believe so.

19 MR. ADAMS: So, based upon your experience as
20 an investigator, on what are the contents of your
21 report, do you believe that the board has a basis
22 to find a violation?

1 INVESTIGATOR HOWZE: I believe so.

2 MR. ADAMS: I have no further questions of Mr.
3 Howze. By the way, Mr. Chairman, I do have
4 additional copies of exhibit A if the board so
5 requires.

6 CHAIRPERSON ANDERSON: The board has -- which
7 is exhibit A? Is the -

8 MR. ADAMS: the investigative report.

9 CHAIRPERSON ANDERSON: The board has that.
10 Mr. Chung?

11 MR. CHUNG: Good afternoon Mr. Howze.

12 INVESTIGATOR HOWZE: Good afternoon

13 MR. CHUNG: Do you have a copy of the report
14 with you? I want to go back and trying to get a
15 little bit more understanding of that -- of the
16 night in question. So, you said you started at
17 ABRA in July 2015? That is about maybe three
18 months prior to the date of the alleged incident?

19 INVESTIGATOR HOWZE: Correct.

20 MR. CHUNG: And what did you do prior to that?

21 MR. HOWZE: Investigator training., Which
22 consists of investigations, inspections,

1 undercover sale to minor, single sale checks,
2 monitoring, amongst other things.

3 MR. CHUNG: No, no, no my question is what did
4 you do prior to joining ABRA ?

5 INVESTIGATOR HOWZE: You want to know my
6 occupation before I got to ABRA?

7 MR. CHUNG: Yes.

8 INVESTIGATOR HOWZE: I was a purchasing clerk
9 for PG Community -- for purchasing at -- public
10 schools.

11 MR. CHUNG: And what does a purchasing clerk
12 do?

13 INVESTIGATOR HOWZE: We handle mostly the
14 bids for contracts for vendors trying to either
15 update schools or refurbish schools.

16 MR. CHUNG: Okay, so from July to September
17 2015, how many investigative reports were the
18 author of? In those three months.

19 INVESTIGATOR HOWZE: I can't recall.

20 MR. CHUNG: More than 100?

21 INVESTIGATOR HOWZE: I can't recall.

22 MR. CHUNG: Less than ten?

1 INVESTIGATOR HOWZE: I can't recall.

2 MR. CHUNG: Let's go back to the night of
3 your visit to Capitale. What time was the first
4 time you came to Capitale that night?

5 INVESTIGATOR HOWZE: 2:05 a.m.

6 MR. CHUNG: 2:05 a.m. You did not come in
7 prior to that?

8 INVESTIGATOR HOWZE: To Capitale?

9 MR. CHUNG: Yes.

10 INVESTIGATOR HOWZE: On my visit this night?

11 MR. CHUNG: Yes.

12 INVESTIGATOR HOWZE: No, I did not.

13 MR. CHUNG: How do you know it was 2:05 a.m.?
14 How do you know it was 2:05 a.m.?

15 INVESTIGATOR HOWZE: That's the time that I
16 saw on my phone.

17 MR. CHUNG: Well, did you check to make sure
18 your phone had the proper time on it?

19 INVESTIGATOR HOWZE: It's correct.

20 MR. CHUNG: It's just correct? What makes you
21 think that? What's your basis? What's your
22 basis?

1 INVESTIGATOR HOWZE: I don't really
2 understand the question. I mean, the time is the
3 time.

4 MR. CHUNG: The question is how do you know
5 your phone has the accurate time on it?

6 MR. ADAMS: Objection. Asked and answered.

7 MR. CHUNG: I don't think he answered it, Mr.
8 Chairman. He said he didn't understand the
9 question.

10 CHAIRPERSON ANDERSON: If he said he didn't
11 understand the question why don't you rephrase
12 the question then, sir?

13 MR. CHUNG: The question is how do you know
14 that the time on your phone has the accurate time
15 on it?

16 INVESTIGATOR HOWZE: I'm not sure. I mean --

17 MR. CHUNG: Thank you. When you arrived at
18 Capitale did you introduce yourself at the door?

19 INVESTIGATOR HOWZE: I did introduce myself
20 at the door.

21 MR. CHUNG: Did you identify yourself as an
22 ABRA investigator?

1 INVESTIGATOR HOWZE: Yes.

2 MR. CHUNG: What did you say?

3 INVESTIGATOR HOWZE: Anthony Howze, ABRA
4 investigator.

5 MR. CHUNG: And who were you with?

6 INVESTIGATOR HOWZE: Investigator Dorshae
7 Demby and Investigator Dalontee Edgerton.

8 MR. CHUNG: You said you were part of a --
9 I'm sorry if I misstate it -- a task force that
10 night?

11 MR. ADAMS: Objection. Misstates the
12 evidence on direct.

13 MR. CHUNG: Are you part of a team with the
14 other two investigators?

15 INVESTIGATOR HOWZE: I was at that time, yes.

16 MR. CHUNG: Tell us about the team. What's
17 the name of the team?

18 INVESTIGATOR HOWZE: The Orange Team.

19 MR. CHUNG: What were your duties that night?

20 INVESTIGATOR HOWZE: Monitoring the
21 establishments from the compiled list for ABRA
22 violations.

1 MR. CHUNG: I'm sorry, a compiled list of
2 ABRA violations?

3 INVESTIGATOR HOWZE: A compiled list of
4 establishments for potential ABRA violations.

5 MR. CHUNG: What other establishments did you
6 go to, again? How many establishments were on
7 that list?

8 INVESTIGATOR HOWZE: I recall four.

9 MR. CHUNG: And what are the other four?
10 What are the four, total?

11 INVESTIGATOR HOWZE: Barcode, Capitale, Eden,
12 Dirty Martini.

13 MR. CHUNG: And tell me the time that you
14 went to each venue.

15 INVESTIGATOR HOWZE: I don't recall.

16 MR. ADAMS: Objection. Relevance.

17 CHAIRPERSON ANDERSON: Why is it relevant?

18 MR. CHUNG: The relevance is he doesn't even
19 recall the times he was at Capitale and the
20 evidence will show that later.

21 CHAIRPERSON ANDERSON: No, he testified that

22 --

1 MR. CHUNG: 2:05?

2 CHAIRPERSON ANDERSON: That's what he
3 testified and then you had a series of questions
4 how was he sure his phone had the correct time.

5 MR. CHUNG: Let's go through the timeline and
6 make sure it was 2:05.

7 CHAIRPERSON ANDERSON: That, I mean you asked
8 him, he testified to that and I think you
9 established in the record, or tried to establish,
10 that maybe something was wrong with his phone, so
11 I mean, I don't follow.

12 MR. CHUNG: Mr. Chair, this will clarify to
13 see where he was at 2:05 a.m. -- can't be in two
14 places at one time, that's what I'm trying to get
15 to.

16 CHAIRPERSON ANDERSON: All right, I'll give
17 you some leeway.

18 MR. CHUNG: Thank you.

19 CHAIRPERSON ANDERSON: I'm going to overrule
20 the objection but I'll give you some leeway to
21 see where you're going.

22 MR. CHUNG: What time were you at Eden? What

1 times were you at Eden?

2 INVESTIGATOR HOWZE: I don't recall.

3 MR. CHUNG: What times were you at Barcode?

4 INVESTIGATOR HOWZE: I don't recall.

5 MR. CHUNG: Where else did you go that night?

6 INVESTIGATOR HOWZE: I just gave you the
7 list.

8 MR. CHUNG: Capitale, Barcode, Eden, what's
9 the last one?

10 INVESTIGATOR HOWZE: Dirty Martini.

11 MR. CHUNG: What time were you there?

12 INVESTIGATOR HOWZE: I don't recall.

13 MR. CHUNG: Okay, let's go into your report.
14 You testified that there were two bottles of
15 champagne sold after 2:00 a.m. Where is that in
16 your report?

17 INVESTIGATOR HOWZE: I never said so.

18 MR. CHUNG: Okay, where do you speak of two
19 bottles of champagne after 2:00 a.m. in this
20 report? Where is that? Can you point me to that
21 line, please?

22 INVESTIGATOR HOWZE: It's not in here.

1 MR. CHUNG: Why?

2 INVESTIGATOR HOWZE: I didn't deem it
3 relevant.

4 MR. CHUNG: It's not relevant that the
5 licensee sold, served or permitted consumption of
6 two bottles of champagne after 2:00 a.m.?

7 INVESTIGATOR HOWZE: The relevance of it was
8 the fireworks and also, like to your point,
9 sales, service and consumption, correct.

10 MR. CHUNG: Okay, where is it in the report
11 about the two bottles of champagne?

12 INVESTIGATOR HOWZE: It's not in here.

13 MR. CHUNG: I'm a bit confused as to your
14 testimony. You had stated that someone had
15 purchased alcohol after 2:00 a.m. at the bar, is
16 that correct?

17 INVESTIGATOR HOWZE: Correct.

18 MR. CHUNG: That gentleman was an African-
19 American gentleman between the ages of 21 and 30?

20 INVESTIGATOR HOWZE: Correct.

21 MR. CHUNG: Who served him that drink?

22 INVESTIGATOR HOWZE: It was a female

1 bartender.

2 MR. CHUNG: It wasn't a male bartender?

3 Describe --

4 CHAIRPERSON ANDERSON: You have to vocalize,
5 Mr. Howze, you can't shake your head.

6 INVESTIGATOR HOWZE: No, it was a female
7 bartender.

8 MR. CHUNG: Describe her, how tall was she?

9 INVESTIGATOR HOWZE: I can't speak to her
10 height. She was maybe average height for a
11 female?

12 MR. CHUNG: Blonde hair?

13 INVESTIGATOR HOWZE: I don't recall.

14 MR. CHUNG: Brunette? Red hair?

15 INVESTIGATOR HOWZE: I don't recall.

16 MR. CHUNG: What was she wearing?

17 INVESTIGATOR HOWZE: She had a black tank top
18 and I think she had on shorts or pants.

19 MR. CHUNG: But you don't recall what color
20 hair she had?

21 CHAIRPERSON ANDERSON: Mr. Howze, you have to
22 -- remember you have to vocalize.

1 INVESTIGATOR HOWZE: No -- I'm answering, no.

2 MR. CHUNG: What type of drink did she serve?

3 INVESTIGATOR HOWZE: It was a whiskey if I
4 remember correctly.

5 MR. CHUNG: What's the brand?

6 INVESTIGATOR HOWZE: I don't recall.

7 MR. CHUNG: What makes you think it's
8 whiskey?

9 INVESTIGATOR HOWZE: From my experience of
10 seeing bottles and actually --

11 MR. CHUNG: I'm sorry?

12 INVESTIGATOR HOWZE: From my experience of
13 actually seeing bottles and also --

14 MR. CHUNG: Mr. Howze, did you drink that
15 night?

16 MR. ADAMS: Excuse me, I'm not sure if the
17 witness had -- excuse me --

18 INVESTIGATOR HOWZE: No, I did not.

19 MR. ADAMS: It's not clear that the witness
20 has --

21 CHAIRPERSON ANDERSON: Hold on one minute --

22 MR. ADAMS: -- completed his answer.

1 CHAIRPERSON ANDERSON: Hold on. Mr. Howze,
2 when either Mr. Chung or Mr. Adams are speaking
3 then there's no question for you to answer so
4 just hold on a minute and let them ask the
5 question. Now, what's the objection, Mr. Adams.

6 MR. ADAMS: It wasn't an objection. It
7 seemed that there was an incomplete answer and
8 that Mr. Howze was still in the process of
9 answering, he had taken a pause.

10 CHAIRPERSON ANDERSON: Mr. Howze, did you
11 fully answer the question that was asked?

12 INVESTIGATOR HOWZE: Whose? Can you repeat
13 the question?

14 CHAIRPERSON ANDERSON: What was the question,
15 Mr. Chung?

16 MR. CHUNG: What makes you think that whiskey
17 was served?

18 INVESTIGATOR HOWZE: Because I'd seen her
19 pour the whiskey.

20 MR. CHUNG: ` What did the bottle look like?

21 INVESTIGATOR HOWZE: It was a clear bottle
22 with brown liquor in it.

1 MR. CHUNG: What was the brand?

2 INVESTIGATOR HOWZE: I can't recall the
3 brand.

4 MR. CHUNG: Did you talk to the bartender and
5 ask her why she served alleged whiskey after 2:00
6 a.m.? Did you ask her, 'why did you serve
7 whiskey?'

8 MR. ADAMS: Objection. Compound question.

9 MR. CHUNG: Did you ask the bartender why she
10 just served whiskey after it was served?

11 INVESTIGATOR HOWZE: I did not.

12 MR. CHUNG: Did you taste what was in the
13 glass?

14 INVESTIGATOR HOWZE: I did not.

15 MR. CHUNG: How long is the bar at Capitale,
16 Mr. Howze, approximately in feet?

17 INVESTIGATOR HOWZE: I'm not sure of the
18 approximately feet of the bar.

19 MR. CHUNG: Is it less than ten feet would
20 you say?

21 INVESTIGATOR HOWZE: I think it's a little
22 more than ten feet.

1 MR. CHUNG: Less than 20 feet?

2 INVESTIGATOR HOWZE: Yeah.

3 MR. CHUNG: Thank you. Where in this report
4 -- you just stated that whiskey was served after
5 2:00 a.m. Where is that in this report, Mr.
6 Howze? Please point us to that line.

7 INVESTIGATOR HOWZE: 'Upon entering' -- on
8 the first page -- 'upon entering the
9 establishment Investigator Howze observed a male
10 patron consuming an alcoholic beverage at the
11 bar area of the establishment.' And I already
12 put in the first sentence of details that I
13 entered the establishment at 2:05 a.m., so that
14 would mean that alcohol was consumed after the
15 allotted time of 2:05 a.m.

16 MR. CHUNG: Where did you write that it was
17 poured and served? Is that in there, Mr. Howze,
18 yes or no?

19 INVESTIGATOR HOWZE: It's not.

20 MR. CHUNG: You may have answered this.
21 Prior to September 21, 2015, you personally --
22 how many establishments did you charge with

1 permitting sales, serving or permitting after
2 2:00 a.m., after the allowed hours by ABRA.

3 INVESTIGATOR HOWZE: I don't recall.

4 MR. CHUNG: Is it less than five?

5 INVESTIGATOR HOWZE: I don't recall.

6 MR. CHUNG: Is it more than 200?

7 INVESTIGATOR HOWZE: I don't recall.

8 MR. CHUNG: You don't recall? All right, what
9 were the other investigators doing? You were
10 with two other investigators, what were they
11 doing?

12 INVESTIGATOR HOWZE: They were observing the
13 establishment, but you can ask them what they
14 were --

15 MR. CHUNG: Did they go up to the bartender?
16 Did you witness them go up to the bartender and
17 say, 'hey, what's going on? What are doing
18 serving after 2:00 a.m.?'

19 INVESTIGATOR HOWZE: I don't recall that.

20 MR. CHUNG: If they had, you probably would
21 have recalled that, yes?

22 MR. ADAMS: Objection. Calls for

1 speculation.

2 CHAIRPERSON ANDERSON: Mr. --

3 MR. CHUNG: There's leeway in this board,
4 Chairman Anderson, you've given Mr. Adams leeway
5 today in the questioning.

6 CHAIRPERSON ANDERSON: I mean, he says that
7 it's after --

8 MR. CHUNG: I'm not asking for speculation.
9 I'm asking him, did you witness any of the other
10 investigators go up to the bartender and ask why
11 she was serving after 2:00 a.m.

12 INVESTIGATOR HOWZE: No, I did not.

13 MR. CHUNG: Thank you. You said there were
14 about 20 to 30 people at the bar? Why did you
15 say the venue was full if there was only 20 to 30
16 people at the bar?

17 INVESTIGATOR HOWZE: In my statement earlier,
18 I said the bar was made up -- I mean, the
19 establishment was broken down into two parts:
20 The part where the bar is and the part where the
21 table and couches and the dance floor is.

22 MR. CHUNG: So, you said -- who did you speak

1 to that night after witnessing -- I apologize,
2 let me back up for a second. I want to
3 [Inaudible 56:34] here. In this report there is
4 nothing that says that a bartender served alcohol
5 after 2:00 a.m. Is that correct?

6 INVESTIGATOR HOWZE: Correct.

7 MR. CHUNG: Okay. It talks about alleged
8 consumption between 2:01 and 2:07. Is that
9 correct?

10 INVESTIGATOR HOWZE: It's not alleged. I
11 observed it, so --

12 MR. CHUNG: At 2:01 you observed it?

13 INVESTIGATOR HOWZE: At 2:05 a.m. is when I
14 observed the violation. 2:01 to 2:07 speaks to
15 the video.

16 MR. CHUNG: Oh, we're going to get to that.
17 Where's the video?

18 INVESTIGATOR HOWZE: It was with my report
19 when I turned it in.

20 MR. CHUNG: Would you agree the video is more
21 accurate than your testimony?

22 INVESTIGATOR HOWZE: I made my -- I made my

1 report --

2 MR. CHUNG: No, no --

3 MR. ADAMS: Your honor --

4 CHAIRPERSON ANDERSON: All right.

5 MR. CHUNG: Yes or no? Would you agree that
6 the video is more accurate than your testimony?
7 It's a video.

8 INVESTIGATOR HOWZE: Yes.

9 MR. CHUNG: Thank you. Mr. Howze, did you
10 drink that night?

11 INVESTIGATOR HOWZE: I did not.

12 MR. CHUNG: You went to all these four
13 establishments, you didn't have a single glass of
14 alcohol?

15 INVESTIGATOR HOWZE: No.

16 MR. CHUNG: Did your colleagues drink that
17 night, Mr. Howze?

18 MR. ADAMS: Objection, relevance.

19 MR. CHUNG: Oh, it's very relevant.

20 CHAIRPERSON ANDERSON: I'm going to sustain
21 the objection. I don't -- we're talking about
22 Mr. -- we're talking about this witness. This

1 witness has talked -- I'm sustaining the
2 objection.

3 MR. CHUNG: I apologize, Chairman Anderson,
4 what's your basis for sustaining the objection?

5 CHAIRPERSON ANDERSON: I'm sustaining the
6 objection, sir. We're talking about -- Mr.
7 Howze's -- this is what this case is about. This
8 case is about whether or not Mr. Howze went to
9 the establishment and whether or not this
10 establishment was -- whether or not there was
11 consumption sales of alcohol after the closed
12 hours at 2:00. Whether or not Mr. Howze or any
13 one of the ABRA investigators consumed alcohol
14 that night, that's not relevant. I mean, unless
15 you're saying that they consumed alcohol at your
16 establishment after 2:00, but that's not relevant
17 in this case. That's why I'm sustaining the
18 objection.

19 MR. CHUNG: The only reason I brought it up,
20 Chairman Anderson, is to make sure that everyone
21 that was there that evening had all of their
22 faculties together with regard to the observation

1 of what was going on.

2 CHAIRPERSON ANDERSON: Well, I think that the
3 testimony is that Mr. Howze is talking about --
4 and I think, Mr. Chung, you've got to be
5 consistent. You said that the video is the best
6 evidence, so why are you asking Mr. Howze about
7 what other people were doing? Maybe you need to
8 call them. So, I'm sustaining the objection.
9 You need to ask Mr. Howze about -- we're asking
10 Mr. Howze about his behavior, not about the
11 behavior of some other investigator who was or
12 was not there, sir. So, that's why I sustained
13 the objection. It is not relevant. Move on,
14 sir.

15 MR. CHUNG: So, in the report there's nothing
16 with regard to service of alcohol and you're
17 [Inaudible 1:00] there is an alleged violation
18 of consumption. Is that correct?

19 INVESTIGATOR HOWZE: Correct.

20 MR. CHUNG: Is it a violation to consume
21 alcohol after 2:00 a.m., Mr. Howze?

22 INVESTIGATOR HOWZE: Yes, it is.

1 MR. CHUNG: Please explain.

2 INVESTIGATOR HOWZE: The ABRA regulation
3 speaks to three parts: Sale, consumption and
4 service. There was a patron I observed consuming
5 alcohol at the allotted time at 2:00 a.m. which
6 you guys submitted to ABRA for operation to be
7 3:00 p.m. to 2:00 a.m. is your hours of sales.

8 MR. CHUNG: Mr. Howze, after 2:00 a.m. are
9 licensees allowed to physically take drinks out
10 of customers' hands in your opinion? Yes, or no?

11 INVESTIGATOR HOWZE: No.

12 MR. CHUNG: That's all I have.

13 CHAIRPERSON ANDERSON: All right, any
14 questions by any board members? Mr. Short?

15 MR. SHORT: Good afternoon, Mr. Howze.

16 INVESTIGATOR HOWZE: Good afternoon.

17 MR. SHORT: Thank you for your report. Mr.
18 Howze, as an ABRA investigator and a member of
19 the staff of the Alcoholic Beverage Regulation
20 Administration, are any persons in that group
21 allowed to consume alcohol while on duty?

22 INVESTIGATOR HOWZE: No, sir.

1 MR. SHORT: Have you ever observed anyone
2 breaking that rule?

3 INVESTIGATOR HOWZE: No, sir.

4 MR. SHORT: Mr. Howze, on the night in
5 question, you said you got the time from what
6 device?

7 INVESTIGATOR HOWZE: My cell phone.

8 MR. SHORT: Is the cell phone that you have
9 on satellite or is it attached to some type of
10 system?

11 INVESTIGATOR HOWZE: I believe it is a
12 satellite.

13 MR. SHORT: And the time for that comes from
14 where? I mean, the system.

15 INVESTIGATOR HOWZE: I guess the satellite.

16 MR. SHORT: Let me ask you this. Do a lot of
17 people other than yourself use their phones to
18 justify the times or to clarify where they are
19 and what time it is?

20 INVESTIGATOR HOWZE: I would say a vast
21 majority does, yes.

22 MR. SHORT: Thank you, that's all I have Mr.

1 Chair.

2 CHAIRPERSON ANDERSON: Any other -- Mr.
3 Alberti?

4 MR. ALBERTI: Mr. Howze, thank you for your
5 report. In that same line of questioning, is the
6 phone that you use, is it your personal phone or
7 is it issued by the government?

8 INVESTIGATOR HOWZE: It's an ABRA issued
9 phone, correct.

10 MR. ALBERTI: Okay. And do you know what
11 carrier is used for the phone service?

12 INVESTIGATOR HOWZE: Verizon.

13 MR. ALBERTI: Verizon? Okay, thank you.
14 Now, do you have your report in front of you?

15 INVESTIGATOR HOWZE: I do.

16 MR. ALBERTI: Thank you. So, let's go to
17 page 2, and I'd like you to go to, hopefully the
18 printing is the same on both, so it's the one,
19 two, three, four, fifth line down there's a
20 sentence that starts in the fifth line down that
21 says, 'investigator Howze always advised, also
22 advised -- ' Do you see that sentence?

1 INVESTIGATOR HOWZE: 'also advised Mr.
2 Zivkovic?'

3 MR. ALBERTI: Yeah, could you repeat -- would
4 you read that sentence for me?

5 INVESTIGATOR HOWZE: 'investigator Howze also
6 advised Mr. Zivkovic that prohibited fire
7 sparklers are not to be used any time when
8 bringing out alcoholic bottles to the tables.'

9 MR. ALBERTI: Okay. So, do you recall why
10 you advised him that during your visit?

11 INVESTIGATOR HOWZE: I advised him because
12 it's a fire hazard and, as ABRA investigators we
13 are to enforce the rule that no fire sparklers
14 are to be prohibited inside the establishment.

15 MR. ALBERTI: Is there something -- is there
16 -- was there an event that prompted you to advise
17 him of that?

18 INVESTIGATOR HOWZE: I observed the bottles
19 actually being brought to the table. I mean,
20 that was the event that prompted it.

21 MR. ALBERTI: Okay, and you testified earlier
22 that the bottles were what?

1 INVESTIGATOR HOWZE: Champagne.

2 MR. ALBERTI: And do you remember the brand
3 of champagne?

4 INVESTIGATOR HOWZE: Moet.

5 MR. ALBERTI: Thank you. I have no further
6 questions.

7 CHAIRPERSON ANDERSON: Any other questions by
8 any other board members? Mr. Silverstein, do you
9 have any questions?

10 MR. SILVERSTEIN: Yes, I do. Mr. Howze, you
11 entered the establishment at what time again?

12 INVESTIGATOR HOWZE: 2:05 a.m.

13 MR. SILVERSTEIN: Was it at that time in a
14 state of being closed or how would you describe -
15 - was it an ongoing operation or were people
16 being pushed out or what was going on?

17 INVESTIGATOR HOWZE: Fully operational.
18 Music was on. Dancing was going on. Fully
19 operational if I had to say so.

20 MR. SILVERSTEIN: And did you see -- and you
21 saw the sale of what appeared to be an alcoholic
22 beverage?

1 INVESTIGATOR HOWZE: Correct.

2 MR. SILVERSTEIN: Was any alcohol -- were
3 things being removed, were the staff cleaning
4 tables or doing anything at that time?

5 INVESTIGATOR HOWZE: I can't recall.

6 MR. SILVERSTEIN: No further questions.

7 CHAIRPERSON ANDERSON: Any other questions by
8 any other board members? Hearing none, Mr.
9 Chung?

10 MR. CHUNG: Mr. Howze, if you see an ABRA
11 violation are you supposed to write it in your
12 report as part of your job?

13 INVESTIGATOR HOWZE: Correct.

14 MR. CHUNG: This missing video -- who did you
15 give it to?

16 MR. ADAMS: Objection, beyond scope of
17 questions by ABRA.

18 CHAIRPERSON ANDERSON: Sustained.

19 MR. CHUNG: You have the report in front of
20 you. To your understanding, what time is the
21 venue supposed to close?

22 INVESTIGATOR HOWZE: The venue? 3:30.

1 MR. CHUNG: And you left the venue at what
2 time again?

3 INVESTIGATOR HOWZE: 2:20 -- 2:20 to 2:30.

4 MR. CHUNG: In this report that counsel
5 submitted as Exhibit A, did your supervisors
6 review it?

7 INVESTIGATOR HOWZE: Yes.

8 MR. CHUNG: It was authorized to be submitted
9 to the board?

10 INVESTIGATOR HOWZE: Yes.

11 MR. CHUNG: Okay. The hours are 3:30. Is it
12 a violation for patrons to dance after 2:00 a.m.
13 in your opinion?

14 INVESTIGATOR HOWZE: To dance? No.

15 MR. CHUNG: Thank you. That's all I have.

16 CHAIRPERSON ANDERSON: Mr. Adams?

17 MR. ADAMS: Yes. A couple of brief questions
18 on redirect for you. So -- I have a lot of notes
19 here. So, Mr. Howze, first of all, during cross
20 examination you were asked about whether or not
21 your report stated anything about two bottles in
22 your report, correct?

1 INVESTIGATOR HOWZE: Correct.

2 MR. ADAMS: So, I want to turn your attention
3 to the second page and the third paragraph on
4 that page. The second sentence on the third
5 page, can you read that, Mr. Howze?

6 INVESTIGATOR HOWZE: The second sentence?

7 MR. ADAMS: The second sentence of that third
8 paragraph. And this is a slender --

9 INVESTIGATOR HOWZE: 'Investigator Howze also
10 observed on multiple occasions sparklers were
11 being accompanied with alcoholic beverages.'

12 MR. ADAMS: And what's the next line?

13 INVESTIGATOR HOWZE: 'Those times varied
14 between 3:33, 3911 hours and 2 hours and four
15 seconds.

16 MR. ADAMS: Okay, now first of all, what's
17 the basis for these observations?

18 INVESTIGATOR HOWZE: The surveillance footage
19 provided by Capitale.

20 MR. ADAMS: And so, now based upon what you
21 wrote here is it your recollection that you saw
22 multiple sparklers in alcoholic beverages as part

1 of the security coverage?

2 INVESTIGATOR HOWZE: On the video? Yes.

3 MR. ADAMS: All right, now in terms of those
4 times, what is the significance of those times?

5 INVESTIGATOR HOWZE: Just to notify that it
6 was a continuing act, that they were, indeed,
7 bringing fire sparklers to accompanying bottles
8 on the table.

9 MR. CHUNG: I would object. The allegation
10 today is for service of alcohol after 2:00 a.m.
11 It has nothing to do with sparklers. What is the
12 reason that we're talking about this right now?

13 CHAIRPERSON ANDERSON: It was asked --

14 MR. ADAMS: He testified about it.

15 CHAIRPERSON ANDERSON: -- if there was
16 testimony and since he --

17 MR. CHUNG: Relevance -- based on relevance.

18 CHAIRPERSON ANDERSON: -- well, I'm not sure
19 who brought it up before, but it was there and on
20 redirect he's asking for clarification so it is
21 reasonable for him to ask the question that came
22 up -- I don't remember who brought it up, but I

1 mean it's during cross examination if he needs --
2 I'm sorry, during the redirect -- if he believes
3 that he needs to clarify for the record testimony
4 that was testified to.

5 MR. ADAMS: All right, so, again, to your
6 recollection fire sparklers -- on what occasions
7 did you see fire sparklers, Mr. Howze?

8 INVESTIGATOR HOWZE: Observed in the
9 establishment?

10 MR. ADAMS: Yes.

11 INVESTIGATOR HOWZE: When the bottle girl
12 actually brung them to the table.

13 MR. ADAMS: And where were the fire
14 sparklers? Where were they physically?

15 INVESTIGATOR HOWZE: Capitale has an office
16 area and a storage --

17 MR. ADAMS: Let me clarify. When you saw the
18 fire sparklers where were they physically?

19 INVESTIGATOR HOWZE: Like, so if this is the
20 bottle, it's like in the hand of the actual
21 bottle girl, so she's holding the champagne
22 bottle and the sparkler all in one hand.

1 MR. ADAMS: So, are there any occasions, when
2 you saw the fire sparklers, were there any
3 occasions where the fire sparklers did not
4 accompany an alcoholic beverage?

5 INVESTIGATOR HOWZE: No.

6 MR. ADAMS: Now turn back to the times that
7 you saw on the videotape, in terms of the
8 coverage that you saw, was that the same time
9 that you were at the establishment or was that a
10 different time?

11 INVESTIGATOR HOWZE: The 2:01 and the 2:07
12 you mean?

13 MR. ADAMS: Well, yeah -- well, actually the
14 33 --

15 INVESTIGATOR HOWZE: No, those were -- I
16 didn't see those times until I actually reviewed
17 the video. The time that I did see was actually
18 noted here in the report.

19 MR. ADAMS: The 2:01 and the 2:07?

20 INVESTIGATOR HOWZE: 2:07.

21 MR. ADAMS: So, this is a different -- so,
22 you're saying that's a different time?

1 INVESTIGATOR HOWZE: Correct.

2 MR. ADAMS: Okay. So, you're saying between
3 the time you were there at 2:01 and 2:07, did you
4 make those observations of fire sparklers with
5 bottles?

6 INVESTIGATOR HOWZE: I did.

7 MR. ADAMS: Okay. Now, in terms of -- you
8 were asked about what you need in order to
9 establish a violation, at that time what did you
10 need -- what information did you need to
11 establish whether or not a violation took place,
12 Mr. Howze?

13 INVESTIGATOR HOWZE: I just needed to speak
14 to an ABC manager or owner.

15 MR. ADAMS: Or what activity did you need to
16 observe during that time?

17 INVESTIGATOR HOWZE: What activity?

18 MR. ADAMS: Yeah, in order to -- in order for
19 you to establish a violation of service or
20 consumption happening after hours, what was your
21 understanding of what you needed to observe?

22 INVESTIGATOR HOWZE: A patron consuming

1 alcoholic beverage or an employee handing an
2 alcoholic beverage to a patron.

3 MR. ADAMS: And did any events like that
4 occur while you were there?

5 INVESTIGATOR HOWZE: It did.

6 MR. ADAMS: You were asked about the number
7 of people at the bar and about your description
8 of the place being crowded, why did you say that
9 the place was crowded?

10 INVESTIGATOR HOWZE: It wasn't a lot of
11 walking around room, that's what made me prompt
12 my statements, saying the establishment was
13 crowded.

14 MR. ADAMS: And what was the capacity for
15 this establishment?

16 INVESTIGATOR HOWZE: What is the capacity?

17 MR. ADAMS: Yes.

18 INVESTIGATOR HOWZE: I don't know off the top
19 of my head, but I don't think it's no more than
20 300 people.

21 MR. ADAMS: In turning to exhibit #2 of your
22 report, and actually also exhibit #3, but let's

1 focus on exhibit #2. Is the capacity stated on
2 exhibit #2?

3 INVESTIGATOR HOWZE: On exhibit #2?

4 MR. ADAMS: Yes. And this is the --

5 INVESTIGATOR HOWZE: It is. It's actually a
6 capacity of 280.

7 MR. ADAMS: And based upon your
8 observations, was the establishment close to that
9 capacity? To 280?

10 INVESTIGATOR HOWZE: I don't know off the top
11 of my head what the exact number of people.

12 MR. ADAMS: By your observation, was it more
13 than 100?

14 INVESTIGATOR HOWZE: Yes.

15 MR. ADAMS: No further questions.

16 CHAIRPERSON ANDERSON: Thank you, Mr. Howze,
17 for your testimony. You can step down. Please
18 do not discuss the nature of your testimony with
19 anyone else. Does the government have any other
20 witnesses?

21 MR. ADAMS: No, your honor, the government
22 rests at this time. We would reserve the right

1 to call a rebuttal witness.

2 CHAIRPERSON ANDERSON: All right, thank you.

3 Mr. Chung, are you ready to move forward?

4 MR. CHUNG: Yes, sir.

5 CHAIRPERSON ANDERSON: Do you have a witness?

6 MR. CHUNG: Yes, I do. The licensee would
7 like to call Ms. Susana Rivero to the stand.

8 CHAIRPERSON ANDERSON: Ms. Rivero? Okay.

9 MR. CHUNG: I'll get her.

10 CHAIRPERSON ANDERSON: The person sitting in
11 the audience, is that a witness of yours?

12 MR. CHUNG: No.

13 CHAIRPERSON ANDERSON: Okay. I don't think
14 he knows where to go, so someone -- could someone
15 go get Ms. Rivero, please?

16 MS. RIVERO: Good afternoon.

17 CHAIRPERSON ANDERSON: Can you just stand,
18 please? Can you raise your right hand? Do you
19 swear or affirm to tell the truth and nothing but
20 the truth?

21 MS. RIVERO: Yes.

22 CHAIRPERSON ANDERSON: Have a seat. Your

1 witness.

2 MR. CHUNG: Good afternoon. Could you please
3 state your full name for the record, please, and
4 spell it out?

5 CHAIRPERSON ANDERSON: I know, Mr. Chung, I
6 know you prefer to stand up, but make sure that
7 there is a microphone close to you to pick up
8 what you're saying. Just make sure that you
9 raise your voice.

10 MR. CHUNG: Yes, sir.

11 CHAIRPERSON ANDERSON: I know that it's your
12 style to be over there, so I'm not going to tell
13 you to sit over there, so I'm fine, I just want
14 to make sure that we can -- that your voice is
15 picked up.

16 MR. CHUNG: Will you please state your full
17 name for the record and spell it for the court
18 reporter, please?

19 MS. RIVERO: Susana Rivero, S-U-S-A-N-A, R-I-
20 V-E-R-O.

21 MR. CHUNG: Now, Ms. Rivero, do you work at
22 Capitale?

1 MS. RIVERO: Yes.

2 MR. CHUNG: And what's your position there?

3 MS. RIVERO: VIP operations manager.

4 MR. CHUNG: How long have you been working
5 there?

6 MS. RIVERO: Four years.

7 MR. CHUNG: Do you recall the incidents
8 alleged against Capitale for September 21, 2015?

9 MS. RIVERO: Yes.

10 MR. CHUNG: Okay. Were you present?

11 MS. RIVERO: Yes.

12 MR. CHUNG: Do you remember an investigator
13 by the name of Mr. Howze coming to Capitale?

14 MS. RIVERO: No.

15 MR. CHUNG: Did you speak with an
16 investigator that evening?

17 MS. RIVERO: I don't know.

18 MR. CHUNG: Okay. As VIP manager, are you in
19 charge of all of the bottles that go to customers
20 at Capitale?

21 MS. RIVERO: Yes.

22 MR. CHUNG: Did you at any time on September

1 21st serve any bottles after 2:00 a.m. on
2 September 21st?

3 MR. ADAMS: Objection, leading. Goes to the
4 very ultimate question.

5 CHAIRPERSON ANDERSON: Rephrase the question,
6 Mr. Chung.

7 MR. CHUNG: Did you serve any bottles after
8 2:00 a.m.?

9 MR. ADAMS: Objection, leading.

10 MR. CHUNG: Did you serve anything after 2:00
11 a.m., Ms. Rivero?

12 MS. RIVERO: No.

13 MR. CHUNG: What time does Capitale stop
14 serving alcohol on Sunday evenings?

15 MS. RIVERO: 1:50.

16 MR. CHUNG: And do you turn the lights on to
17 let customers know that the bar is no longer
18 serving?

19 MS. RIVERO: Yes, we flash the lights up.

20 MR. CHUNG: Ms. Rivero, what is the name of
21 your point of sales system at Capitale?

22 MS. RIVERO: Focus.

1 MR. CHUNG: And are you familiar with the
2 Focus system?

3 MS. RIVERO: Yes.

4 MR. CHUNG: Do you do the nightly reports on
5 the Focus system?

6 MS. RIVERO: Yes.

7 MR. CHUNG: Does the Focus system have a
8 clock on it?

9 MS. RIVERO: Yes.

10 MR. CHUNG: Essentially a time stamp?

11 MS. RIVERO: Yes.

12 MR. CHUNG: Is the Focus system maintained by
13 Capitale?

14 MS. RIVERO: Yes.

15 MR. CHUNG: Is it under a maintenance
16 program, to the best of your knowledge?

17 MS. RIVERO: Yes.

18 MR. CHUNG: Did you have any issues with the
19 Focus system the night of September 21, 2015?

20 MS. RIVERO: No.

21 MR. CHUNG: Okay. Ms. Rivero, how long is
22 the bar at Capitale in your estimation?

1 MS. RIVERO: About 50 to 60 feet.

2 CHAIRPERSON ANDERSON: I'm sorry, what did
3 she say?

4 MS. RIVERO: 50 to 60 feet.

5 CHAIRPERSON ANDERSON: 50 to 60? Okay.

6 MR. CHUNG: Thank you. Did you do the close-
7 out reports for that evening?

8 MS. RIVERO: Yes.

9 MR. CHUNG: Now, let's go back to your
10 operations. You testified that you stopped
11 serving at 1:50 a.m. Are the bartenders allowed
12 to serve drinks to customers, whether they sell
13 it or not, are they allowed to serve them to
14 customers after 2:00 a.m.?

15 MS. RIVERO: No.

16 MR. CHUNG: Do the bartenders allow
17 consumption after 2:00 a.m.?

18 MS. RIVERO: No.

19 MR. CHUNG: Does the security staff allow
20 patrons to consume alcohol after 2:00 a.m.?

21 MS. RIVERO: No.

22 MR. CHUNG: Do they try to grab drinks from

1 the customers after 2:00 a.m.?

2 MS. RIVERO: Yes.

3 MR. CHUNG: If a patron refuses to hand over
4 their glass of alcohol, as the manager do you
5 authorize security or any staff to take the drink
6 physically out of the customer's hand?

7 MS. RIVERO: No.

8 MR. CHUNG: Ms. Rivero, what time is the
9 venue allowed to stay open 'til from Sunday night
10 'til Monday morning?

11 MS. RIVERO: 3:30.

12 MR. CHUNG: Thank you. Is that on the
13 license, Ms. Rivero?

14 MS. RIVERO: Yes.

15 MR. CHUNG: Chairman Anderson, I would like
16 to show Ms. Rivero the nightly report from
17 Capitale. Counsel has a copy of it.

18 MR. ADAMS: I believe it's testifying to what
19 this is --

20 MR. CHUNG: I'll ask her the proper questions
21 to lay the foundation.

22 MR. ADAMS: Just for the record, is this --

1 Mr. Chairman, just for the record can counsel
2 please indicate whether or not this is Exhibit
3 #1?

4 CHAIRPERSON ANDERSON: I don't have anything
5 in front of me, so --

6 MR. CHUNG: I would like to approach and hand
7 a copy of it to the board, please.

8 CHAIRPERSON ANDERSON: Sure, give it to

9 MR. CHUNG: This will be marked as Licensee's
10 Exhibit #1. Ms. Rivero, is CTSG the maintenance
11 company that handles the Focus system for the
12 Capitale?

13 MS. RIVERO: Yes.

14 MR. CHUNG: Does Chris Davis work at CTSG?

15 MS. RIVERO: Yes.

16 MR. CHUNG: Were you cc'd on an e-mail on
17 April 25, 2017?

18 MS. RIVERO: Yes.

19 MR. CHUNG: An e-mail to Mr. Davis?

20 MS. RIVERO: Yes.

21 MR. CHUNG: And could you please read what
22 that e-mail says, Ms. Rivero?

1 MS. RIVERO: 'Is there a way to see if we had
2 any sales after 2:00 a.m. that morning?'

3 MR. CHUNG: And what did Mr. Davis reply with
4 in the e-mail.

5 MS. RIVERO: 'It looks like there were three
6 checks open after 2:00 a.m. on that night.'

7 MR. CHUNG: And are you able to explain why
8 those three checks were open after 2:00 a.m., Ms.
9 Rivero?

10 MS. RIVERO: Yes.

11 MR. CHUNG: Okay. The first one we have,
12 tell me the time of the transaction.

13 MS. RIVERO: 2:00 a.m.

14 MR. CHUNG: Okay and how much is it for?

15 MS. RIVERO: Three dollars.

16 MR. CHUNG: Okay, Ms. Rivero, what do you
17 sell at Capitale that is three dollars?

18 MS. RIVERO: Water.

19 MR. CHUNG: Okay. Licensee's exhibit #2.

20 MR. ADAMS: Is this being put in evidence?

21 MR. CHUNG: Yeah, I'm going to enter it all
22 into evidence after I finish up with the witness.

1 MR. ADAMS: Okay, so this is your only copy?

2 MR. CHUNG: Yes. Ms. Rivero, what is the
3 check number on that?

4 MS. RIVERO: #153.

5 MR. CHUNG: Okay, 153. Taking a look at
6 licensee's exhibit #2 which I will present to the
7 board right after Ms. Rivero sees it. Who is the
8 bartender on that --

9 MR. ADAMS: I have an objection in terms I
10 guess of the voir dire of this document. There's
11 -- at least upon the record -- there's no
12 indication about what exhibit #2 is, none that
13 has come from the witness and for the record and
14 frankly for proper description of documents I
15 think that's necessary.

16 CHAIRPERSON ANDERSON: Again, I have not even
17 seen the document so I can't even make a ruling
18 because I have not seen the document.

19 MR. CHUNG: May I approach?

20 CHAIRPERSON ANDERSON: Yes, Mr. Chung.

21 MR. CHUNG: Ms. Rivero,

22 CHAIRPERSON ANDERSON: Go ahead.

1 MR. CHUNG: Ms. Rivero, is that a true copy
2 of the -- true and accurate copy of check #153
3 that Chairman Anderson has in his hands?

4 MS. RIVERO: Yes.

5 MR. CHUNG: Okay, and that is a receipt for
6 what, Ms. Rivero?

7 MS. RIVERO: Water.

8 MR. CHUNG: Okay. What time was that water
9 sold at according to the receipt?

10 MS. RIVERO: 2:00 a.m.

11 MR. CHUNG: The licensee would like to mark
12 that as Exhibit #2 for the licensee. In looking
13 at exhibit #1, Ms. Rivero, what is the second
14 transaction after 2:00 a.m. on the night in
15 question?

16 MS. RIVERO: One cent for an over-tip.

17 MR. CHUNG: Okay, what time is that entered
18 in at?

19 MS. RIVERO: 2:13.

20 MR. CHUNG: Okay. Is an over-tip a sale of a
21 product to a customer, Ms. Rivero?

22 MS. RIVERO: No.

1 MR. CHUNG: Would you characterize that as a
2 reconciliation for the evening as --

3 MR. ADAMS: Objection. Leading.

4 MR. CHUNG: Explain to the board why an over-
5 tip would be entered at 2:13 a.m., Ms. Rivero.

6 MS. RIVERO: Closing out my reports.

7 MR. CHUNG: Thank you. Finally, we have the
8 last transaction, Ms. Rivero. What check number
9 is that?

10 MS. RIVERO: #155.

11 MR. CHUNG: Exhibit #1 has check #155. What
12 time is that entered into Ms. Rivero?

13 MS. RIVERO: 2:56.

14 MR. CHUNG: 2:56, what time? P.m. or a.m.?

15 MS. RIVERO: A.m.

16 MR. CHUNG: Okay. How much is the
17 transaction for?

18 MS. RIVERO: \$4.40.00.

19 MR. CHUNG: Did you sell anything at that
20 time for \$4.40?

21 MS. RIVERO: No.

22 MR. CHUNG: Why is it entered at that time,

1 Ms. Rivero?

2 MS. RIVERO: I was closing out, reconciling a
3 miss rung up tab, which I was the one that rang
4 it up.

5 MR. CHUNG: Thank you. Going back to that
6 check, Ms. Rivero, was payment received prior to
7 2:00 a.m.?

8 MS. RIVERO: Yes.

9 MR. CHUNG: Thank you. Ms. Rivero when you
10 close Capitale, do you turn off all of the -- do
11 you turn off all of the lights and stop the music
12 exactly at 2:00 a.m.?

13 MS. RIVERO: No.

14 MR. CHUNG: Do you do what you call a
15 graduated closing?

16 MS. RIVERO: Yes.

17 MR. CHUNG: Is that why the license runs
18 until 3:30 in the morning, Ms. Rivero?

19 MS. RIVERO: Yes.

20 MR. CHUNG: Okay. Has MPD told you that it's
21 a good idea to dump everyone on the street at
22 2:01 a.m.?

1 MR. ADAMS: Objection. Relevance and
2 leading.

3 MR. CHUNG: The relevance is Mr. Howze has
4 already testified as to the closing time, that
5 people were still --

6 MR. ADAMS: Actually, I apologize. This is
7 part of the problem here, and maybe the witness
8 needs to be excused because now he's speaking to
9 the testimony of a separate witness in front of
10 another witness.

11 CHAIRPERSON ANDERSON: All right, can --
12 well, this is not in court where you could turn
13 the noise on and the witness --

14 MR. ADAMS: Exactly.

15 MS. RIVERO: Do you want me to step out?

16 CHAIRPERSON ANDERSON: Do we need to ask the
17 witness to step out so you can have further
18 conversations or --

19 MR. ADAMS: I mean, is there a way that the
20 respondent can respond without speaking to
21 someone else's testimony?

22 MR. CHUNG: I can change the phrasing of the

1 question.

2 CHAIRPERSON ANDERSON: All right, Mr. Chung.

3 MR. CHUNG: What has MPD advised you about
4 graduated closing, Ms. Rivero?

5 MS. RIVERO: Not to kick everyone out at the
6 same, exact time.

7 MR. CHUNG: Thank you.

8 MS. RIVERO: Slowly.

9 MR. CHUNG: Thank you.

10 MS. RIVERO: So we have no issues. At this
11 point I'd like to enter exhibits #1 and #2 as
12 licensee's evidence.

13 CHAIRPERSON ANDERSON: Mr. Adams?

14 MR. ADAMS: In terms of exhibit #1, I'm not
15 sure if it's -- I have no objections.

16 CHAIRPERSON ANDERSON: All right, so moved.
17 Your witness Mr. Adams.

18 MR. ADAMS: Hello, Ms. Rivero.

19 MS. RIVERO: Hi, how are you?

20 MR. ADAMS: So, Ms. Rivero, so let me ask you
21 about these exhibits. First of all, well,
22 exhibit #2, he gave us only one copy of it, so

1 essentially those were receipts for water,
2 correct?

3 MS. RIVERO: Three dollars.

4 MR. ADAMS: Three dollars for water, correct?

5 MS. RIVERO: Yes.

6 MR. ADAMS: So, you're saying from 2:00 --
7 and you state that the establishment doesn't
8 close at 2:00 a.m., but there's a graduated
9 closing, correct?

10 MS. RIVERO: Correct.

11 MR. ADAMS: So, you state that you were there
12 on September 21, 2015, correct?

13 MS. RIVERO: Correct.

14 MR. ADAMS: How many people were at the
15 establishment that day?

16 MS. RIVERO: I don't know.

17 MR. ADAMS: Was it more than 100 people?

18 MS. RIVERO: Throughout the night?

19 MR. ADAMS: Okay, at closing time at 2:00
20 a.m., more than 100 people were at the
21 establishment, correct?

22 MS. RIVERO: No.

1 MR. ADAMS: There were less than 100 people?

2 MS. RIVERO: Yes.

3 MR. ADAMS: So, there wasn't a performance
4 going on at that time?

5 MS. RIVERO: At 2:00 a.m.?

6 MR. ADAMS: Yes.

7 MS. RIVERO: No.

8 MR. ADAMS: So, has Capitale ever had a
9 performer named The Game perform there?

10 MS. RIVERO: He was a host, yes.

11 MR. ADAMS: He was a host. So, was he
12 performing at Capitale on that night?

13 MS. RIVERO: Yes.

14 MR. ADAMS: All right, and so -- and you're
15 saying that when -- was he still in the process
16 of hosting at 2:00 a.m. correct? Let me ask the
17 question again. He was still hosting at 2:00
18 a.m., correct?

19 MS. RIVERO: Yes.

20 MR. ADAMS: He was, all right.

21 MS. RIVERO: Was still hosting, yes.

22 MR. ADAMS: And according to your license

1 your hours of operation are until 3:30, correct?

2 MS. RIVERO: Correct.

3 MR. ADAMS: So that means it's 90 minutes
4 between 2:00 a.m. and 3:30 in which the
5 establishment would be operating that night,
6 correct?

7 MS. RIVERO: Correct.

8 MR. ADAMS: All right. And so you're saying
9 that -- your testimony is that -- and your load,
10 your capacity load is 280 patrons.

11 MS. RIVERO: Correct.

12 MR. ADAMS: So, you need 90 minutes to make
13 sure that 280 patrons are able to get out of the
14 establishment, is that correct?

15 MS. RIVERO: Correct.

16 MR. ADAMS: All right, and so on the night in
17 question, you're saying that The Game was not
18 performing, is that right?

19 MS. RIVERO: Correct.

20 MR. ADAMS: All right. So,

21 MR. CHUNG: Objection. Can we please define
22 the term performing? Ms. Rivero has said he was

1 there. What does performing mean?

2 MR. ADAMS: That's not really an evidentiary
3 objection.

4 MR. CHUNG: Objection, can you clarify the
5 question, please, as to the term performing?

6 MR. ADAMS: It's already been answered.

7 CHAIRPERSON ANDERSON: Rephrase your
8 question, Mr. Adams.

9 MR. ADAMS: It's already been -- I mean,
10 there's no question. It's already been answered
11 so it's really not a question at this point.

12 CHAIRPERSON ANDERSON: All right.

13 MR. ADAMS: So, in your role -- I apologize --
14 --in terms of exhibit #3 that was provided, did
15 you -- was that a check that you actually did --

16 MR. CHUNG: Exhibit #3 or #2?

17 MR. ADAMS: I'm sorry, I apologize, In terms
18 of exhibit #2, Ms. Rivero, was that a sale that
19 you actually completed?

20 MR. CHUNG: Objection. Asked and answered.

21 MR. ADAMS: No.

22 MR. CHUNG: She already testified as to this.

1 CHAIRPERSON ANDERSON: He's cross examining,
2 at least not on direct. You might have asked on
3 direct, but this is cross examination so he's
4 asking her about this transaction, so I mean
5 that's an appropriate question for cross
6 examination, so I'm going to overrule the
7 objection.

8 MR. ADAMS: So, Ms. Rivero, did you
9 personally conduct that sale for the three dollar
10 water?

11 MS. RIVERO: No, my bartender did.

12 MR. ADAMS: Your bartender. So, you did have
13 a bartender working at 2:00 a.m., correct?

14 MS. RIVERO: Yes.

15 MR. ADAMS: And so in terms, now turning to
16 exhibit #1, what is exhibit #1? What is this?

17 MS. RIVERO: Excuse me?

18 MR. ADAMS: What is exhibit #1-- what is
19 this?

20 MS. RIVERO: Oh, it's a screen shot of our
21 PSO system, of all the transactions that happened
22 from that night.

1 MR. ADAMS: Okay, so I see check #153 -- on
2 the right corner I see check #155.

3 MS. RIVERO: Mm hmm.

4 MR. ADAMS: What's check #155?

5 MS. RIVERO: That's the last check that I
6 rang up for \$440, the last one.

7 MR. ADAMS: Okay, and that's where it says
8 [Inaudible 20:03].

9 MS. RIVERO: Yes.

10 MR. ADAMS: And so are you saying that you're
11 the only person who rings up checks?

12 MS. RIVERO: No.

13 MR. ADAMS: You're not, all right.

14 MS. RIVERO: No.

15 MR. ADAMS: So, other people can also ring up
16 checks.

17 MS. RIVERO: Correct.

18 MR. ADAMS: So, this is just for what you're
19 involved with in terms of the VIP section,
20 correct?

21 MS. RIVERO: Correct.

22 MR. ADAMS: All right. And it also notes

1 that the time it was opened and closed at 2:56
2 a.m., correct?

3 MS. RIVERO: Correct.

4 MR. ADAMS: And underneath here, I see that
5 there are two Moet Rose SP transactions. Do you
6 see that underneath?

7 MS. RIVERO: Yes. Mm hmm.

8 MR. ADAMS: All right. But nowhere do I see
9 \$200 on the left side of the screen. Do you see
10 -- there's nothing on here that says \$200,
11 correct?

12 MS. RIVERO: On the right side there is, yes.

13 MR. ADAMS: On the right side, but how about
14 on the left side? There's nothing that says
15 \$200, correct?

16 MS. RIVERO: No, it says \$440.

17 MR. ADAMS: Okay. \$440. So this is all for
18 [Inaudible 21:07]?

19 MS. RIVERO: Yes.

20 MR. ADAMS: And so what you're saying is that
21 guides -- so in your direct testimony you're
22 stating that for this transaction that was just

1 merely a reconciliation.

2 MS. RIVERO: Correct.

3 MR. ADAMS: All right, and so did you serve
4 that?

5 MS. RIVERO: No.

6 MR. ADAMS: All right. So more or less your
7 involvement was just doing the reconciliation
8 after the fact, correct?

9 MS. RIVERO: I actually received the payment
10 for this one prior to me closing out and I had to
11 reconcile because it was a special.

12 MR. ADAMS: Okay. Is the time indicated on
13 this document of when you closed out?

14 MS. RIVERO: No.

15 MR. ADAMS: Okay, and by the way, what is
16 close-out?

17 MS. RIVERO: I have to reconcile all the tabs
18 and this was rang up wrong.

19 MR. ADAMS: Okay, so when you closed out it
20 was at 2:56 a.m., correct?

21 MS. RIVERO: Well, I had to reconcile but
22 yes, I did that, when I'm closing out all my

1 reports.

2 MR. ADAMS: And so I see that for some reason
3 #152 is missing, but essentially I see 21
4 transactions. Is it safe to say there's 21
5 transactions listed on the left side of the
6 document, correct? You --

7 CHAIRPERSON ANDERSON: You have to vocalize.

8 MS. RIVERO: Yes, yes.

9 MR. ADAMS: And that's not the complete
10 transactions, these 21 transactions are not the
11 complete transactions for Capitale on September
12 21, 2015, right?

13 MS. RIVERO: Correct.

14 MR. ADAMS: Board's indulgence. So in terms
15 of this document, this document shows you when an
16 alcoholic beverage is entered into the system,
17 correct?

18 MS. RIVERO: Correct. .

19 MR. ADAMS: And it also shows you when
20 payment is made, correct?

21 MS. RIVERO: Yes.

22 MR. ADAMS: It doesn't include when the

1 alcoholic beverages are served, does it?

2 MS. RIVERO: No.

3 MR. ADAMS: It doesn't include when someone
4 actually consumes the beverage, correct?

5 MS. RIVERO: No.

6 MR. ADAMS: All right. So, it's your
7 testimony, to your knowledge, is that while The
8 Game was hosting on September 21, 2015, for the
9 90 period -- or for I guess the one hour period
10 after The Game, after your last transaction at
11 2:00 a.m., is it your testimony that the only
12 thing that was served to your knowledge was one
13 water for the whole establishment?

14 MS. RIVERO: Correct.

15 MR. ADAMS: Thank you very much. I have no
16 further -- board's indulgence. Another question.
17 In terms of this, this is only, does this report
18 include all transactions both cash and those done
19 by credit card?

20 MS. RIVERO: No.

21 MR. ADAMS: Okay, so what does this include?

22 MS. RIVERO: Exact cash.

1 MR. ADAMS: Exact cash, this is it?

2 MS. RIVERO: Mm hmm.

3 MR. ADAMS: So, it doesn't include credit
4 card transactions.

5 MS. RIVERO: Correct.

6 MR. ADAMS: All right.

7 CHAIRPERSON ANDERSON: Any questions by any
8 board members? Mr. Short?

9 MR. SHORT: Good afternoon.

10 MS. RIVERO: Good afternoon.

11 MR. SHORT: Your name again?

12 MS. RIVERO: Susana Rivero.

13 MR. SHORT: Ms. Rivero, you testified you've
14 been working at this establishment for four
15 years?

16 MS. RIVERO: Yes, sir.

17 MR. SHORT: And how long have you been in
18 charge of the VIP section?

19 MS. RIVERO: About three years.

20 MR. SHORT: About three years?

21 MS. RIVERO: Yes.

22 MR. SHORT: Your alcohol consumption serving

1 hours end at 2:00 on weekends?

2 MS. RIVERO: On Sundays, correct.

3 MR. SHORT: The night of this event was on a
4 Sunday.

5 MS. RIVERO: Yes.

6 MR. SHORT: So, if you had -- how many people
7 were there at 2:00? How many people were
8 approximately left?

9 MS. RIVERO: I don't know.

10 MR. SHORT: There were people there.

11 MS. RIVERO: Yes.

12 MR. SHORT: So in your testimony [Inaudible
13 25:23] there was only one water rang up in an
14 hour period.

15 MS. RIVERO: Correct.

16 MR. SHORT: So, people just sit there in the
17 crowd for one hour and nothing in front of them?

18 MS. RIVERO: Yes, they do.

19 MR. SHORT: All right, now during the hours
20 when alcohol is consumed and you are serving in
21 the VIP section, there's been testimony that
22 bottles of Moet champagne are served in the

1 establishment?

2 MS. RIVERO: Correct.

3 MR. SHORT: Does anyone serve champagne other
4 than yourself?

5 MS. RIVERO: Yes, the servers.

6 MR. SHORT: The servers. Now are the bottles
7 of Moet are they served just in the VIP section
8 or throughout the establishment?

9 MS. RIVERO: Throughout the establishment.

10 MR. SHORT: Have you ever seen any
11 pyrotechnics, sprinklers, sparklers, anything
12 that emits fire from it since you were working
13 there? Ever see anytime, whether it was after
14 hours, before hours, have you ever seen sparklers
15 in the club? Ever? In four years?

16 MS. RIVERO: Yes.

17 MR. SHORT: You have seen sparklers?

18 MS. RIVERO: Yes.

19 MR. SHORT: Do you know that they are illegal
20 to have in a nightclub?

21 MS. RIVERO: Yes, which we don't use anymore.
22 It's been a long time that we haven't used them.

1 MR. SHORT: They've never been legal to use
2 inside a club, did you know that?

3 MS. RIVERO: No.

4 MR. SHORT: So, when you saw them being used
5 before, you knew they were illegal, you
6 participated in that?

7 MS. RIVERO: We stopped using them.

8 MR. SHORT: When did you stop using them?

9 MS. RIVERO: About three years ago.

10 MR. SHORT: So, it's your testimony that
11 there's never been any sparklers in this
12 establishment in the last three years?

13 MS. RIVERO: I don't --

14 MR. SHORT: Please think about your answer.

15 MS. RIVERO: I don't know.

16 MR. SHORT: When is the last time you
17 physically saw sparklers in this club?

18 MS. RIVERO: More than two years.

19 MR. SHORT: Do you know why the law does not
20 allow sparklers in nightclubs?

21 MS. RIVERO: It's hazardous to the patrons
22 who are in the club

1 MR. SHORT: Did you know that before you
2 stopped using them?

3 MS. RIVERO: When I found out, we stopped
4 using them.

5 MR. SHORT: Was it your decision to stop or
6 was it someone else made you stop?

7 MS. RIVERO: The establishment taught us
8 about it and we stopped.

9 MR. SHORT: Well, if the establishment hadn't
10 stopped, you still would have been doing it?

11 MS. RIVERO: Yes.

12 MR. SHORT: That's all I have, Mr. Chair.

13 CHAIRPERSON ANDERSON: Any other questions by
14 any other board members? Mr. Alberti?

15 MR. ALBERTI: Ms. Rivero, Exhibit #1 I guess
16 it is, the POS system printout, when's the first
17 time you saw that?

18 MS. RIVERO: This exhibit?

19 MR. ALBERTI: Yes.

20 MS. RIVERO: Yesterday.

21 MR. ALBERTI: Yesterday.

22 MS. RIVERO: Yes.

1 MR. ALBERTI: And how did you acquire it?

2 MS. RIVERO: I was reviewing the
3 transactions.

4 MR. ALBERTI: Where?

5 MS. RIVERO: At Capitale.

6 MR. ALBERTI: How? How were you reviewing
7 them?

8 MS. RIVERO: Through our system. Through the
9 POS system.

10 MR. ALBERTI: Okay, so you printed this out?

11 MS. RIVERO: No, Craig Davis did.

12 MR. ALBERTI: Okay. Did you verify this in
13 your system?

14 MS. RIVERO: Yes.

15 MR. ALBERTI: That this is exactly what, this
16 page is what you saw?

17 MS. RIVERO: Yes.

18 MR. ALBERTI: Okay. Who has access to the
19 system?

20 MS. RIVERO: Everybody -- all the managers do
21 to the system.

22 MR. ALBERTI: Okay, who has access to making

1 changes to the system?

2 MS. RIVERO: The managers.

3 MR. ALBERTI: All the managers do?

4 MS. RIVERO: Yes.

5 MR. ALBERTI: Including yourself?

6 MS. RIVERO: Yes.

7 MR. ALBERTI: Okay, and does Chris, the guy
8 who printed this out for you?

9 MS. RIVERO: I don't know.

10 MR. ALBERTI: Okay. Thank you. No further
11 questions.

12 CHAIRPERSON ANDERSON: Any other questions by
13 any other board members? Mr. Perry?

14 MR. PERRY: Ms. Rivero, on the same thing, I
15 just want to understand it: What at your
16 establishment -- there's a #143, check #143?

17 MS. RIVERO: Mm hmm.

18 MR. PERRY: For 1:33 a.m. \$495, FL-1 Amber M.
19 Do you have any idea what that would be?

20 MS. RIVERO: It's probably a bottle of Cervel
21 or a bottle of vodka.

22 MR. PERRY: A bottle of vodka?

1 MS. RIVERO: Yeah.

2 MR. PERRY: Okay. Okay, and how big of a
3 bottle of vodka is it? How big? I mean, is it a
4 magnum, is it a little one?

5 MS. RIVERO: It's a regular one liter.

6 MR. PERRY: Regular one liter?

7 MS. RIVERO: Yeah.

8 MR. PERRY: Okay. And so, I guess my
9 question is you said you guys stop, or you start
10 taking, if I recall, you said you stop taking
11 orders at 1:50 or start taking drinks away at
12 1:50?

13 MS. RIVERO: Yes.

14 MR. PERRY: So, it just seems to me -- I
15 mean, having had bottle service before, is it
16 possible to drink a bottle, in your opinion -- I
17 assume you've done this for a while -- is it
18 possible to drink a bottle of vodka in 17
19 minutes?

20 MS. RIVERO: Yes.

21 MR. PERRY: Yes? Okay. Let me ask you, what
22 did you do before -- you've been at Capitale for

1 four years. What were you doing before?

2 MS. RIVERO: I was working at a hospital.

3 MR. PERRY: Okay, and how long were you
4 working there for?

5 MS. RIVERO: About three years.

6 MR. PERRY: And what did you do at the
7 hospital?

8 MS. RIVERO: I was a nurse.

9 MR. PERRY: And what did you do as a nurse?

10 MS. RIVERO: Medication, practice,
11 procedures.

12 MR. PERRY: And you say you don't recall
13 seeing Mr. Howze the night of the 21st?

14 MS. RIVERO: I can't recall by the last name.

15 MR. PERRY: You do recall talking to him on
16 the night of the 25th?

17 MS. RIVERO: I don't recall by the last name,
18 but there were agents there.

19 MR. PERRY: Okay.

20 MS. RIVERO: If I see them, then yes, I could
21 tell you.

22 MR. PERRY: Do you recall speaking to an ABRA

1 investigator?

2 MS. RIVERO: Saying hello and walking --
3 walking past us, yes.

4 MR. PERRY: All right. And, as VIP host it's
5 your job to sort of entertain the VIPs and make
6 sure they're having a good time, is that part of
7 your job?

8 MS. RIVERO: I'm a manager, I'm not a server,
9 so I don't really participate with the client, so
10 no.

11 MR. PERRY: Okay, and did you drink anything
12 the night of the 21st?

13 MS. RIVERO: No.

14 MR. PERRY: All right, thank you.

15 CHAIRPERSON ANDERSON: Any other questions by
16 any other board members? I guess I just want to
17 ask a question for clarification for me. So, you
18 said you close the bar at 1:50, I think that's
19 your testimony. So, what is it that the
20 bartenders do between 1:50 and 3:30? Say, if
21 you're -- what do they do?

22 MS. RIVERO: No one's there 'til 3:30. We

1 have a license until 3:30. Usually everybody's
2 usually gone by 2:30. Our bartenders, at 1:50,
3 start cleaning the bar, putting bottles away.

4 CHAIRPERSON ANDERSON: But do you know
5 exactly this night, the night in question, do you
6 know what time that everyone left?

7 MS. RIVERO: No.

8 CHAIRPERSON ANDERSON: Do you know whether or
9 not -- I think Mr. Howze had testified on the
10 direct, during his testimony that there were
11 probably about three bartenders at the bar when
12 he got there at 2:06 or 2:05 that day. Would
13 that be correct, that the bartenders, let's say
14 after 2:00 the bartenders would still be at the
15 bar?

16 MS. RIVERO: Correct, they have to close out.
17 Correct.

18 CHAIRPERSON ANDERSON: And do you guys sell
19 anything between, say, since you're open 'til,
20 you can be open 'til 2:30 -- 'til 3:30 -- are you
21 saying that on this particular night the only
22 service that was made after 2:00 was a bottle of

1 water at 2:03 and then nothing else was sold. Is
2 that your testimony is purported to say?

3 MS. RIVERO: After 2:00 a.m. correct.

4 CHAIRPERSON ANDERSON: So, there were no
5 sales at this establishment after 2:00 a.m. on
6 this day?

7 MS. RIVERO: No.

8 CHAIRPERSON ANDERSON: But how am I supposed
9 to believe that -- I guess your information from
10 Focus, so does this capture all the sales for
11 everyone that night or is it just for one
12 particular person?

13 MS. RIVERO: No, for everyone

14 CHAIRPERSON ANDERSON: This exhibit #1 then
15 captures all the sales from between 1:26 and --
16 all the transactions between 1:26 and 2:56 on
17 this date?

18 MS. RIVERO: No.

19 CHAIRPERSON ANDERSON: All right, so it's
20 correct then that this document only verifies all
21 the cash transactions between 1:26 and 2:56 on
22 this particular day?

1 MS. RIVERO: Correct.

2 CHAIRPERSON ANDERSON: All right. Mr. Adams?

3 MR. ADAMS: Yes, let me make sure I have some
4 clarification about this. In terms of, again,
5 exhibit #1.

6 MR. CHUNG: Chairman Anderson, I apologize.
7 After you is it back to me or is it back to Mr.
8 Adams?

9 CHAIRPERSON ANDERSON: It's your witness,
10 sir, so you go last.

11 MR. ADAMS: I just want to make sure I have
12 this straight. All right, so these 21
13 transactions, they represent the transactions
14 that you handled, correct?

15 MS. RIVERO: No.

16 MR. ADAMS: Okay, what are they?

17 MS. RIVERO: Exact cash.

18 MR. ADAMS: Only for exact cash?

19 MS. RIVERO: Correct.

20 MR. ADAMS: That you handled?

21 MS. RIVERO: No.

22 MR. ADAMS: For the complete establishment?

1 MS. RIVERO:

2 MR. ADAMS: So cash transactions, there are
3 21 cash transactions for Capitale for, I believe,
4 excuse me, September 21, 2015, this is what?

5 MS. RIVERO: Exact cash.

6 MR. ADAMS: Exact cash.

7 MS. RIVERO: Correct.

8 MR. ADAMS: All right, got you. What do you
9 mean by exact cash?

10 MS. RIVERO: You don't have to give the
11 client change back, so there's a button that says
12 exact cash.

13 MR. ADAMS: So, in other words, this does not
14 include -- outside of the credit card report, the
15 credit card transactions which we already
16 established, this doesn't include cash
17 transactions where there was change?

18 MS. RIVERO: Correct.

19 MR. ADAMS: Okay. And such transactions did
20 occur on that dates to your knowledge?

21 MS. RIVERO: Correct.

22 MR. ADAMS: And your responsibility that

1 night was not the bar, correct?

2 MS. RIVERO: Correct.

3 MR. ADAMS: And in terms of you talking about
4 when people usually leave out of the
5 establishment, on that night The Game was
6 performing, correct?

7 MS. RIVERO: Correct.

8 MR. ADAMS: He was hosting.

9 MS. RIVERO: Correct.

10 MR. ADAMS: All right. On that night, the
11 patrons did not leave by 2:15, correct? With him
12 hosting?

13 MS. RIVERO: Correct.

14 MR. ADAMS: In fact, that night when he was
15 hosting, at let's say 2:05 the lights were still
16 low, correct?

17 MS. RIVERO: I don't know.

18 MR. ADAMS: Now you state that you didn't see
19 this until yesterday, correct?

20 MS. RIVERO: Correct.

21 MR. ADAMS: And you got it from someone else?

22 MS. RIVERO: I can review this on my POS

1 system but we asked Chris to pull it up to make
2 sure that that was the transactions that were
3 rang up.

4 MR. ADAMS: Okay, so you're stating that
5 Chris printed out the POS system for exact cash
6 only and that's what's reflected here, correct?

7 MS. RIVERO: Correct.

8 MR. ADAMS: All right. I notice that there
9 is -- next to the times there is an X. What is
10 the X?

11 MS. RIVERO: That's been closed out.

12 MR. ADAMS: Okay. And if you hit X does that
13 remove a transaction from this?

14 MS. RIVERO: Excuse me?

15 MR. ADAMS: If you hit the X would that
16 remove the transaction from this list?

17 MS. RIVERO: No, you can't remove the X.

18 MR. ADAMS: Then where is #152?

19 MS. RIVERO: There's another transaction. It
20 could have been credit card, it's not an exact
21 cash transaction.

22 MR. ADAMS: Okay, thank you. I have no

1 further questions.

2 CHAIRPERSON ANDERSON: Mr. Chung?

3 MR. CHUNG: Ms. Rivero, are you able to go in
4 to Focus and manipulate times for closed out
5 tabs?

6 MS. RIVERO: No.

7 MR. CHUNG: Did you do that prior to today's
8 hearing?

9 MR. ADAMS: Objection. Leading.

10 MS. RIVERO: No.

11 MR. ADAMS: Leading.

12 CHAIRPERSON ANDERSON: Rephrase the question.

13 MR. CHUNG: Are all these reports in front of
14 you true and accurate to the best of your
15 knowledge?

16 MS. RIVERO: Yes.

17 MR. CHUNG: Let's go back to board member
18 Short's question with regard to sparklers. You
19 were advised that they were no longer allowed to
20 be used in the venue, yes or no?

21 MS. RIVERO: Yes.

22 MR. CHUNG: Okay. Whether it was two years,

1 a year and a half, are you estimating the time
2 period?

3 MS. RIVERO: Yes.

4 MR. CHUNG: Okay. Prior to that, were you
5 using them knowing that they weren't allowed to
6 be used?

7 MS. RIVERO: No.

8 MR. CHUNG: Okay. Now, let's go back to a
9 sale that board member Perry asked about with
10 regard to a bottle. Do groups -- large groups of
11 people -- share bottles?

12 MS. RIVERO: Yes.

13 MR. CHUNG: We had to talk about these
14 transactions. Ms. Rivero, exact cash means all
15 cash transactions, yes or no?

16 MS. RIVERO: Yes.

17 MR. CHUNG: Okay. I want to clarify that for
18 the record. Ms. Rivero, I'm going to show you an
19 exhibit, Mr. Adams I want you to look at this
20 with regard to a detail. Do you --

21 MR. ADAMS: I apologize. I don't think he
22 can show this, we're on a redirect at this point.

1 If there's an exhibit he wanted to show her it
2 should have been shown unless we have opportunity
3 to cross her.

4 MR. CHUNG: I have no objections to your
5 crossing her.

6 CHAIRPERSON ANDERSON: Is this a new line?

7 MR. ADAMS: A new document.

8 MR. CHUNG: We had touched upon it because
9 Mr. Adams had touched upon it.

10 MR. ADAMS: New document.

11 CHAIRPERSON ANDERSON: What document is this?

12 MR. CHUNG: With regard to an explanation as
13 to exhibit #1. A more itemized detail. He was
14 asking about more receipts.

15 MR. ADAMS: I don't understand how Ms. Rivero
16 would have a basis upon which to make an
17 explanation upon exhibit #1. The bottom line is
18 that you can't introduce a new exhibit on
19 redirect.

20 CHAIRPERSON ANDERSON: Right, I'm going to
21 sustain.

22 MR. CHUNG: I can get it through another

1 witness, that's fine.

2 CHAIRPERSON ANDERSON: All right, that's
3 fine.

4 MR. CHUNG: Okay, are you in charge of all
5 champagne bottles whether it's bartenders or
6 servers that are sold or served to customers?

7 MS. RIVERO: Yes.

8 MR. ADAMS: Objection, beyond scope.

9 MR. CHUNG: We talked about the champagne.

10 MR. ADAMS: This is a new line of questioning
11 in terms of responsibilities.

12 CHAIRPERSON ANDERSON: I'll allow you to ask
13 this question but remember this is redirect, so
14 therefore we need to keep our questions based on
15 the questions that the board asked, so I'll ask
16 you this -- you can ask one question.

17 MR. CHUNG: After you saw an ABRA
18 investigator that night did you allow champagne
19 to be sold or served to a customer?

20 MS. RIVERO: No.

21 MR. ADAMS: He's leading.

22 MR. CHUNG: Now, do you charge for champagne?

1 MS. RIVERO: No.

2 MR. CHUNG: Okay. Are customers allowed to
3 have drinks of water after 2:00 a.m.?

4 MS. RIVERO: Yes.

5 MR. CHUNG: Thank you, that's all I have.

6 CHAIRPERSON ANDERSON: Ms. Rivero, thank you
7 for your testimony. Please do not discuss the
8 nature of your testimony with anyone for the
9 duration of this hearing. You are -- you can
10 remain in this room or you're free to go, but
11 please do not, I need you to be with the other
12 witnesses so you can accidentally have
13 conversations with them, I'll say it that way so
14 you can step down, thank you.

15 MS. RIVERO: Thank you.

16 CHAIRPERSON ANDERSON: Do you have another
17 witness, sir?

18 MR. CHUNG: Yes, Mr. Chairman, I'd like to
19 call Mr. Zivkovic.

20 MR. ADAMS: Before the next witness enters,
21 again the District is going to object to the
22 leading questions. Obviously, we understand that

1 leading questions can be used to a certain
2 extent, but there's been leading questions to
3 material issues in terms of testimony from the
4 respondent's witnesses. Obviously, we will make
5 the objections at the correct time, but the way
6 the questions are formed are tantamount to
7 testifying for the witnesses themselves. If the
8 respondent is allowed to make those type of
9 leading questions, the District would like to
10 have the courtesy of being able to make the same
11 type of leading questions for our witnesses.

12 CHAIRPERSON ANDERSON: Well, what I would
13 ask, Mr. Adams, is that I will ask you to be on
14 your toes, to form, make the objection
15 immediately and I will rule accordingly.

16 MR. ADAMS: Yes, your honor.

17 CHAIRPERSON ANDERSON: All right, thank you.

18 MR. ADAMS: Mr. Chairman.

19 CHAIRPERSON ANDERSON: Did someone go to get
20 the witness? Can we have one of the
21 investigators -- I'm sorry, who's the person
22 you're calling? I'm sorry, Mr. Chung?

1 MR. CHUNG: Mr. Aleksandar Zivkovic.

2 CHAIRPERSON ANDERSON: Could someone get Mr.
3 Zivkovic from the witness room, please? All
4 right, sir, can you raise your right hand? Do
5 you swear or affirm to tell the truth and nothing
6 but the truth?

7 MR. ZIVKOVIC: I do.

8 CHAIRPERSON ANDERSON: Have a seat, please.

9 MR. CHUNG: Would you please state your name
10 for the record and spell it for the court
11 reporter?

12 MR. ZIVKOVIC: Aleksandar Sasha Zivkovic. A-
13 L-E-K-S-A-N-D-A-R, Z-I-V-K-O-V-I-C.

14 MR. CHUNG: I'm going to show you the
15 government's exhibit, is it A?

16 CHAIRPERSON ANDERSON: Mr. Chung, who is he?

17 MR. CHUNG: Are you affiliated with Capitale?

18 MR. ZIVKOVIC: Yes, I'm a manager at
19 Capitale.

20 MR. CHUNG: Would you please state for the
21 board how long you've been working there?

22 MR. ZIVKOVIC: I've been working for the

1 company for ten years.

2 CHAIRPERSON ANDERSON: Pull the microphone
3 closer to you, sir, thank you, yeah.

4 MR. CHUNG: Are you an ABRA licensed manager,
5 sir?

6 MR. ZIVKOVIC: Yes, I am.

7 MR. CHUNG: And repeat for the board how long
8 you've been working at this establishment.

9 MR. ZIVKOVIC: For ten years, since March,
10 2007.

11 MR. CHUNG: Mr. Zivkovic, this is
12 government's exhibit A, investigator's report.
13 Are you aware of the allegations made against the
14 establishment you worked at for September 21,
15 2015?

16 MR. ADAMS: Objection. Improper witness to
17 review this investigative report itself. The
18 witness would have to speak from his own
19 recollection.

20 MR. CHUNG: Why is he an improper witness,
21 Chairman Anderson?

22 CHAIRPERSON ANDERSON: No, I'm going to --

1 MR. ADAMS: He's being -- we're asking a
2 witness who did not write the report to testify
3 regarding a report that he did not write, that
4 doesn't really seem --

5 CHAIRPERSON ANDERSON: Is he being asked
6 about the report itself or -- and the reason why
7 I'm asking, because one of the witnesses is his
8 manager's license that's a part of the exhibit.
9 Is he being asked about his context --

10 MR. ADAMS: He was handed the report and the
11 question that's before us is he aware of the
12 allegations against the establishment based on a
13 report?

14 CHAIRPERSON ANDERSON: I think that's
15 appropriate because, if I'm correct, I'm looking
16 at the document and one of the exhibits in the
17 document is his driver's license, a copy -- I'm
18 sorry, not -- it's a copy of his manager's
19 license, so I think -- and if I remember from the
20 testimony from Mr. Howze, Mr. Howze spoke to him,
21 so I think that -- let me see where -- I'm going
22 to overrule the objection and so let me see

1 what's being asked and then please object if you
2 believe that you need to raise an objection.

3 MR. ADAMS: Yes, Mr. Chairman.

4 MR. CHUNG: Did Mr. Howze ask you to --

5 MR. ADAMS: Objection. We're on direct and
6 [Inaudible 49:07] apply. The counsel's standing
7 at the witness stand actually pointing to text
8 within the record -- again this seems
9 inappropriate on direct.

10 MR. CHUNG: This is not text.

11 CHAIRPERSON ANDERSON: Well, I don't know
12 what it is, so what I will ask, Mr. Chung, is
13 there a document, is there an exhibit that you're
14 showing the witness?

15 MR. CHUNG: I'm trying to refresh his
16 recollection.

17 CHAIRPERSON ANDERSON: But in order to
18 refresh his recollection, it has to be an exhibit
19 and you need to show him and you need to identify
20 what it is so he can identify it so I'll know
21 what it is that he has. So, whatever document he
22 has I need you to take it away from him and let's

1 start back over. Let's start back over and
2 what's the question you are asking, sir?

3 MR. ADAMS: And, more importantly, in order
4 to refresh recollection it must be proven the
5 person just cannot recall a fact and at this
6 point we haven't even gotten to whether or not he
7 --

8 CHAIRPERSON ANDERSON: And I don't know
9 what's being asked.

10 MR. ADAMS: -- has forgotten anything.

11 CHAIRPERSON ANDERSON: And I don't know what
12 he's being asked and I don't know what document
13 that was refreshing his recollection so let's --

14 MR. CHUNG: It's not a problem.

15 CHAIRPERSON ANDERSON: The only document that
16 I think was being given to him was the
17 investigative report, so --

18 MR. CHUNG: It's already part of the record.

19 CHAIRPERSON ANDERSON: So far, so let's --
20 what's the question that's being asked?

21 MR. CHUNG: Did you speak with the
22 investigator on September 21, 2015?

1 MR. ZIVKOVIC: I don't remember.

2 MR. SILVERSTEIN: Please speak up.

3 MR. ZIVKOVIC: I don't remember.

4 MR. CHUNG: Did you ever at any time speak
5 with an ABRA investigator that asked you to
6 prepare footage for September 21, 2015?

7 MR. ZIVKOVIC: I don't remember.

8 MR. CHUNG: I'd like to introduce the
9 government's exhibit A to refresh this witness'
10 recollection. It's part of record, it's the
11 investigative report.

12 CHAIRPERSON ANDERSON: If Mr. Adams doesn't
13 have any objection.

14 MR. ADAMS: He can -- his -- I mean, his
15 memory can be refreshed with anything but, you
16 know, I guess, as long as the only thing he has
17 is the report itself. Does the witness only have
18 the report?

19 MR. CHUNG: He has the report and I was going
20 to ask you -- Chairman Anderson, the license, is
21 this an exhibit or an attachment to the report?

22 CHAIRPERSON ANDERSON: It's an attachment.

1 The hours are -- the hours is an attachment to
2 the report.

3 MR. ADAMS: For the sake of efficiency, I'm
4 not going to object to that.

5 CHAIRPERSON ANDERSON: All right, so what's
6 the question that's being asked?

7 MR. CHUNG: Let's go a different path. What
8 time do you stop serving alcohol at 2:00 a.m. --
9 I mean, sorry, what time do you stop serving
10 alcohol on Sunday evenings?

11 MR. ZIVKOVIC: It's around 1:50 a.m.

12 MR. CHUNG: Okay. What time is alcohol
13 service allowed to on Sunday evenings per your
14 license?

15 MR. ZIVKOVIC: 2:00 a.m.

16 MR. CHUNG: At any time on September 21,
17 2015, did you allow a bartender or server to
18 serve alcohol after 2:00 a.m.?

19 MR. ADAMS: Objection, leading.

20 MR. ZIVKOVIC: No.

21 CHAIRPERSON ANDERSON: Rephrase the question,
22 Mr. -- well, he answered the question and it was

1 a leading question.

2 MR. ADAMS: I want to strike the answer.

3 CHAIRPERSON ANDERSON: All right.

4 MR. CHUNG: Did any employee at Capitale
5 serve past 2:00 a.m. on Sunday, September 21,
6 2017?

7 MR. ZIVKOVIC: No.

8 MR. CHUNG: And what time do you stop serving
9 at the bar on Sunday evening?

10 MR. ZIVKOVIC: Around 1:50 a.m.

11 MR. CHUNG: What do you do to let customers
12 know that the bar is on last call?

13 MR. ZIVKOVIC: We flash the lights around
14 1:50 and we let bartenders know to stop serving.

15 MR. CHUNG: Is there a sign posted?

16 MR. SILVERSTEIN: Excuse me, sir. Did you
17 say 1:50 or 1:15?

18 MR. ZIVKOVIC: 50, 50, I'm sorry.

19 MR. SILVERSTEIN: One five-0?

20 MR. ZIVKOVIC: One five-0, yeah.

21 MR. SILVERSTEIN: Okay.

22 MR. CHUNG: Does the venue at 2:00 a.m. turn

1 up all the lights? Sorry, let me rephrase. Is
2 it normal practice for the venue around 2:15 to
3 turn up all the lights and stop the music and
4 dump everyone out onto the street?

5 MR. ZIVKOVIC: No.

6 MR. CHUNG: Do you do what the industry calls
7 a graduated closing?

8 MR. ZIVKOVIC: Yes.

9 MR. CHUNG: On that evening, did you do a
10 graduated closing?

11 MR. ZIVKOVIC: Yes, I did.

12 MR. CHUNG: Okay. Did you at any time tell
13 your colleagues to prepare footage for an
14 investigator who requested security footage?

15 MR. ZIVKOVIC: No.

16 MR. CHUNG: Are you aware of Capitale
17 providing security footage to ABRA for today's
18 hearing?

19 MR. ZIVKOVIC: No.

20 MR. CHUNG: If I were to tell you Capitale
21 provided footage to ABRA would you find that
22 unbelievable or is it possible that Capitale does

1 provide footage to ABRA in the past?

2 MR. ZIVKOVIC: They do provide it when it's
3 requested, yes.

4 MR. CHUNG: Thank you. And do you do
5 everything to the best of your abilities to
6 provide footage to the ABRA board if requested?

7 MR. ZIVKOVIC: I do.

8 MR. CHUNG: You do it in a timely fashion?

9 MR. ZIVKOVIC: Yes, I do.

10 MR. CHUNG: All right, thank you. Did you
11 observe two bottles of -- did you observe any
12 champagne being served after 2:00 a.m. on the
13 night in question?

14 MR. ZIVKOVIC: No.

15 MR. CHUNG: Any drinks?

16 MR. ZIVKOVIC: No.

17 MR. CHUNG: Okay. Next question: What does
18 the venue do after 2:00 a.m. to try to get drinks
19 out of peoples' hands?

20 MR. ZIVKOVIC: We send security to talk to
21 customers who are still holding drinks to finish
22 up their drinks and leave.

1 MR. CHUNG: Okay. Are you allowed, as a
2 licensed ABRA manager, to physically take drinks
3 out of peoples' hands?

4 MR. ZIVKOVIC: No.

5 MR. CHUNG: Okay. Does the venue charge for
6 tap water after 2:00 a.m. or is it free?

7 MR. ADAMS: Objection, relevance.

8 MR. ZIVKOVIC: We charge.

9 MR. CHUNG: Tap water?

10 MR. ZIVKOVIC: Tap water, no. Just bottled
11 water.

12 CHAIRPERSON ANDERSON: I'll allow it.

13 MR. CHUNG: That's all I have, thank you.

14 CHAIRPERSON ANDERSON: Go ahead, Mr. Adams.

15 MR. ADAMS: So, Mr. Zivkovic, right?

16 MR. ZIVKOVIC: Yes, sir.

17 MR. ADAMS: How are you doing? So, let me
18 ask you this specifically. First, when you
19 testified you stated you didn't recall whether or
20 not you spoke with an ABRA investigator on
21 September 21, 2015?

22 MR. ZIVKOVIC: I can't recall.

1 MR. ADAMS: Do you remember working on
2 September 21, 2015?

3 MR. ZIVKOVIC: I do.

4 MR. ADAMS: You do?

5 MR. ZIVKOVIC: I do.

6 MR. ADAMS: So, what was the entertainment
7 lineup on September 21, 2015?

8 MR. ZIVKOVIC: What is the entertainment
9 line?

10 MR. ADAMS: Who was the entertainer on
11 September 21?

12 MR. ZIVKOVIC: It was one of the rappers,
13 Game.

14 MR. ADAMS: Oh, The Game? All right.

15 MR. ZIVKOVIC: Yes.

16 MR. ADAMS: And The Game, he was performing
17 at the establishment correct?

18 MR. ZIVKOVIC: I don't think he performed.

19 MR. ADAMS: He didn't do any raps at all?

20 MR. ZIVKOVIC: I don't think he did.

21 MR. ADAMS: All right, was music -- music was
22 performing that night, correct?

1 MR. ZIVKOVIC: Music was, yeah.

2 MR. ADAMS: All right, very well.

3 MR. ZIVKOVIC: But he wasn't rapping.

4 MR. ADAMS: He wasn't rapping. So, he was
5 hosting, correct?

6 MR. ZIVKOVIC: Yes, sir.

7 MR. ADAMS: So, you state that -- have you
8 ever -- while you've been there has there ever
9 been occasions in which you've been working at
10 Capitale where alcohol sales -- sorry, the
11 alcohol service continued after 1:50?

12 MR. ZIVKOVIC: No.

13 MR. ADAMS: It never, ever happened?

14 MR. ZIVKOVIC: No.

15 MR. ADAMS: All right. So, you state, you're
16 talking about consumption of the alcoholic
17 beverages and you state that security is asked
18 for them to stop drinking at 2:00, correct?

19 MR. ZIVKOVIC: No, at 1:50 when we flash the
20 lights, they already go and ask customers to
21 finish up their drinks.

22 MR. ADAMS: So, is it safe to say that no

1 patron should have an alcoholic beverage after
2 2:00 a.m.? Is that safe to say?

3 MR. ZIVKOVIC: Yes.

4 MR. ADAMS: All right. So, what occurred on
5 September 21, 2015? What do you remember
6 occurring?

7 MR. ZIVKOVIC: As far as --

8 MR. ADAMS: That night.

9 MR. ZIVKOVIC: -- generally, that night?

10 MR. ADAMS: Yes, what happened?

11 MR. CHUNG: Objection, I don't understand the
12 question, it needs to be more specific. What do
13 you mean "occurred that night"? What is he, what
14 is Mr. Adams asking?

15 MR. ADAMS: Describe what happened that
16 night.

17 MR. CHUNG: Objection, is Mr. Adams asking
18 for the weather or what is he asking for?

19 MR. ADAMS: That's for the witness to
20 determine what I'm asking.

21 CHAIRPERSON ANDERSON: There's a question, so
22 we're being asked about the 21st so if the

1 witness can answer the question, he can; if he
2 can't answer, he can state that he doesn't.

3 MR. ZIVKOVIC: It was a regular Sunday
4 evening. It was busy, hosted by the rapper.
5 Nothing unusual that I can remember.

6 MR. ADAMS: So, it was busy that night?

7 MR. ZIVKOVIC: It was busy.

8 MR. ADAMS: Was it crowded that night?

9 MR. ZIVKOVIC: Yeah.

10 MR. ADAMS: So, it was crowded at 2:00 a.m.?

11 MR. ZIVKOVIC: It was crowded all night,
12 yeah.

13 MR. ADAMS: All right. And The Game, he
14 stopped his hosting responsibilities, is it safe
15 to say that was around 2:30 or so?

16 MR. ZIVKOVIC: I don't remember the exact
17 time, but he was there until the end of the
18 night, yeah.

19 MR. ADAMS: So, you're saying that no alcohol
20 was served after 2:00, correct?

21 MR. ZIVKOVIC: Correct.

22 MR. ADAMS: But you're saying that you don't

1 remember speaking with ABRA investigators that
2 night, correct?

3 MR. ZIVKOVIC: I don't remember speaking to
4 one.

5 MR. ADAMS: That night, when champagne
6 bottles were served, they were served with
7 sparklers, correct?

8 MR. ZIVKOVIC: Or lights, I don't know.

9 MR. ADAMS: Okay. I know it was a couple of
10 years ago but --

11 MR. ZIVKOVIC: Yeah.

12 MR. ADAMS: -- they could have been with
13 sparklers?

14 MR. ZIVKOVIC: Yeah, could have been, yeah.

15 MR. ADAMS: I have no further questions.

16 CHAIRPERSON ANDERSON: Mr. Zivkovic, do you
17 have the report with you?

18 MR. ZIVKOVIC: No.

19 CHAIRPERSON ANDERSON: Can someone give him a
20 copy of the report, please? I need you to go
21 through the document and there's a color picture.

22 MR. ADAMS: He may not have a colored

1 picture.

2 CHAIRPERSON ANDERSON: Mine is in color. Can
3 you look at exhibit -- I guess it's exhibit #1.

4 MR. ZIVKOVIC: This one? My license?

5 CHAIRPERSON ANDERSON: Yeah, what's that?

6 MR. ZIVKOVIC: That's my license.

7 CHAIRPERSON ANDERSON: What license is that?

8 MR. ZIVKOVIC: Driver's license.

9 CHAIRPERSON ANDERSON: Your driver's license?

10 MR. ZIVKOVIC: Yeah.

11 CHAIRPERSON ANDERSON: Do you know how this
12 documented ended up -- do you recall giving your
13 driver's license to an ABRA investigator at any
14 point?

15 MR. ZIVKOVIC: I don't remember, but if it's
16 here I probably did.

17 CHAIRPERSON ANDERSON: But this is your
18 driver's license?

19 MR. ZIVKOVIC: This is my license, yeah. It
20 is my license.

21 CHAIRPERSON ANDERSON: It is?

22 MR. ZIVKOVIC: Yes, sir.

1 CHAIRPERSON ANDERSON: All right, I want you
2 to just go back to page #2 of this report and go
3 to the first paragraph on page #2 of this report
4 and just take a couple of minutes to review that
5 for me, please. Where it says Investigator
6 Howze. Just read that paragraph for me, please.

7 MR. CHUNG: Chairman Anderson, which
8 paragraph are you at? I apologize.

9 CHAIRPERSON ANDERSON: The first paragraph on
10 page #2. Read it to yourself, please.

11 MR. CHUNG: Are you talking about the
12 summary?

13 CHAIRPERSON ANDERSON: Page #2 of the
14 investigative report.

15 MR. CHUNG: The first paragraph?

16 CHAIRPERSON ANDERSON: The first paragraph,
17 yes.

18 MR. ZIVKOVIC: Okay, I read it.

19 CHAIRPERSON ANDERSON: Do you remember --
20 does this refresh your recollection of this day?

21 MR. ZIVKOVIC: The thing is, I had these
22 visits so many times and this could be one of

1 them. I specifically don't remember that was the
2 same night, so that's why I don't remember,
3 because it was so long ago, and these type of
4 visits we have monthly or every couple of weeks
5 or sometimes two or three weeks in a row.

6 CHAIRPERSON ANDERSON: So you don't remember.

7 MR. ZIVKOVIC: I cannot specifically remember
8 that this was the same -- that they -- and that's
9 why I cannot recall the details, seeing one of
10 the ABRA agents that night.

11 CHAIRPERSON ANDERSON: Well if you don't
12 remember, you don't remember. I'm just asking.
13 Okay, that's fine.

14 MR. ZIVKOVIC: Excuse me?

15 CHAIRPERSON ANDERSON: I said if you don't
16 remember, you don't remember, that's fine.

17 MR. ZIVKOVIC: And this is just stating that
18 I provided my ID and I talked to one of the
19 agents and times and this is very possible, but
20 as I said I don't remember specifically that this
21 was on this night. Do you understand what I'm
22 trying to say? Because it was so many these --

1 so many times they had these visits from ABRA
2 investigators and I don't specifically remember
3 which one it was.

4 CHAIRPERSON ANDERSON: Well, let me ask you a
5 question, sir. Why are you here today? Why were
6 you called? Do you know why you were called to
7 testify today?

8 MR. ZIVKOVIC: Yes.

9 CHAIRPERSON ANDERSON: Why?

10 MR. ZIVKOVIC: To answer questions.

11 CHAIRPERSON ANDERSON: About what?

12 MR. ZIVKOVIC: About serving -- proper time
13 of serving alcohol.

14 CHAIRPERSON ANDERSON: So it wasn't about
15 this incident that occurred this day, it was just
16 general?

17 MR. CHUNG: Objection, Mr. Anderson. We
18 spoke about the specific date on my questioning.

19 CHAIRPERSON ANDERSON: Mr. Chung, with all
20 due respect, I mean I show the man his driver's
21 license, I showed him the summary of what Mr.
22 Howze said and he said he can't remember. He

1 can't remember -- hold on, Mr. Chung, I'm asking
2 -- this is about September 21st and he said he
3 can't remember, you asked questions about the
4 video, he said he didn't give anybody any video,
5 so I'm basically I showed him the driver -- I'm
6 trying to find out how we got a copy of his
7 driver's license. I gave him an opportunity to
8 refresh his recollection regarding this
9 paragraph. He read it and he's saying 'I can't
10 remember even if I said this on the 21st' so I'm
11 just asking him if he's here testifying today
12 about what your general policy is about that you
13 don't serve alcohol after 1:50 --

14 MR. CHUNG: He's speaking as to this line
15 here, talking to Mr. Howze specifically.

16 CHAIRPERSON ANDERSON: I asked, sir -- I
17 asked him to review the paragraph. I said, 'take
18 a couple of minutes to review the first
19 paragraph.'

20 MR. CHUNG: This isn't his report, Chairman
21 Anderson. This is written by somebody else.

22 CHAIRPERSON ANDERSON: Mr. Chung, the witness

1 testified he can't remember anything on the 21st,
2 okay? That's what he testified.

3 MR. CHUNG: That's not my recollection of his
4 testimony, Chairman Anderson.

5 CHAIRPERSON ANDERSON: I think that's all
6 we've been talking about. He can't remember
7 anything that happened specifically on the 21st,
8 and so that's one the reasons why I asked -- I
9 showed him his driver's license. One of the
10 questions you specifically asked him about the
11 video, he said he didn't give any video to
12 anyone. I thought maybe, hopefully I wasn't
13 dreaming. He said that he didn't give anyone any
14 video. I mean, you made a big deal about 'we
15 can't find the video,' and I guess he said -- I
16 thought I heard he said he didn't give them the
17 video. So, I showed him his driver's license to
18 say 'okay, fine, okay it could be that because as
19 we stated we come to the place many times, so
20 maybe ask some other point we could have gotten
21 his driver's license.' I'm giving him an
22 opportunity to review the specific allegation

1 about this case. I've asked him to review this
2 paragraph. Does it refresh his recollection
3 about the specific incident for this day? He
4 said, 'no it does not' so all I'm saying, sir, if
5 we have a witness to testify today I'm asking the
6 witness, I mean did he know why he's testifying
7 today because I mean -- this is the seminal issue
8 in this case. This is the statement that the
9 investigator wrote. I said 'read it, do you
10 remember this?' so he could say to me, 'okay I
11 didn't speak to the investigator, this didn't
12 happen,' but normally when you give a witness a
13 statement -- I mean I know you're trying to
14 refresh his recollection. I mean there's just a
15 dispute here, this is a statement so if the
16 investigator said this is what he says, the
17 investigator testified to say 'I spoke to the
18 manager, this is the basis of my conversation
19 with the manager, here is the manager,' I'm
20 saying even if you can't remember the specific
21 discussion you had with the investigator, this is
22 what the investigator said you said. Do you

1 agree with this?' And he's saying, "I still
2 don't remember."

3 MR. CHUNG: Oh, I see what you're saying.

4 CHAIRPERSON ANDERSON: Okay, all right. And
5 so, because he said, because remember that I'm
6 saying I would have hoped that in preparing to
7 testify today that he knew that he's coming to
8 testify about this day and not what you talk
9 about but he would have some semblance of 'I'm
10 here to testify about the 21st and my
11 conversation with this investigator,' and so,
12 therefore, in my view if he can't remember a
13 thing, I mean, on the issue in this case, I mean
14 why is he even testifying?

15 MR. CHUNG: Again, I don't think he's saying
16 that he doesn't remember anything from the night.
17 We specifically just brought him here for
18 questioning with regard to the direct testimony
19 that I went over.

20 CHAIRPERSON ANDERSON: All right, sir. Any
21 other questions by any other board members? Go
22 ahead, Mr. Alberti.

1 MR. ALBERTI: Mr. Zivkovic: Very simply, you
2 did testify earlier that you remembered a rapper
3 named The Game there on September 21st, right?

4 MR. ZIVKOVIC: Yes, sir.

5 MR. ALBERTI: And I think you also testified
6 that he was there until the end of the night.

7 MR. ZIVKOVIC: Yes.

8 MR. ALBERTI: Meaning how late approximately?
9 What would that mean?

10 MR. ZIVKOVIC: Maybe 2:00, 2:15, 2:20.

11 MR. ALBERTI: Okay, okay. That's fine. You
12 also said it was crowded. Do you remember the
13 crowd that night? I mean, do you remember how
14 big it was, is what I'm asking?

15 MR. ZIVKOVIC: I don't know in numbers but it
16 was -- the club was like almost full.

17 MR. ALBERTI: Almost full, meaning -- give me
18 a round figure. I'm not pinning you down to
19 exact numbers but just give me a round figure.

20 MR. ZIVKOVIC: Like 260, 270 people maybe.

21 MR. ALBERTI: Okay, great.

22 MR. ZIVKOVIC: I don't know.

1 MR. ALBERTI: And that extended until 2:00?

2 Is that -- according to your testimony --

3 MR. ZIVKOVIC: Yeah, I mean through the night
4 people started leaving so I don't know, I mean
5 I'm occupied with some other things so I don't
6 pay attention.

7 MR. ALBERTI: Okay. I got you, thank you.
8 That's good enough, thank you.

9 CHAIRPERSON ANDERSON: Mr. Short?

10 MR. SHORT: Good afternoon, sir.

11 MR. ZIVKOVIC: Good afternoon.

12 MR. SHORT: How many years have you been
13 manager at this establishment?

14 MR. ZIVKOVIC: Five years.

15 MR. SHORT: Okay. There was some testimony
16 earlier and I'm getting a little redundant but I
17 want to ask you this. Five years?

18 MR. ZIVKOVIC: Yeah, I've been working for
19 ten years, but as a manager, almost five years,
20 yeah.

21 MR. SHORT: You've been at this club for ten
22 years?

1 MR. ZIVKOVIC: Yes, sir.

2 MR. SHORT: When was your first recollection
3 of the club using sparklers?

4 MR. ZIVKOVIC: When I first start.

5 MR. SHORT: When did you start?

6 MR. ZIVKOVIC: Start? It was, I don't know
7 four, five --

8 MR. SHORT: You've been there ten years?

9 MR. ZIVKOVIC: Yeah.

10 MR. SHORT: Were they doing it when you got
11 there?

12 MR. ZIVKOVIC: Yeah.

13 MR. SHORT: They were doing it when you got
14 there.

15 MR. ZIVKOVIC: Yeah.

16 MR. SHORT: At the starting point. But that
17 was ten years ago?

18 MR. ZIVKOVIC: Right.

19 MR. SHORT: When did they stop?

20 MR. ZIVKOVIC: I think two or three years ago
21 or whenever the law said, the fire department
22 told us not to use them anymore because of the

1 fire.

2 MR. SHORT: I'm going to give you my
3 designation but I can tell you it's been over 30
4 years ago you can't use sparklers inside a
5 building in Washington, D.C. So you said you
6 stopped using it jst two or three years ago.

7 MR. ZIVKOVIC: Or maybe a few years, I don't
8 recall.

9 MR. SHORT: What made you stop?

10 MR. ZIVKOVIC: I think one of the fire
11 marshals advised us not to use it.

12 MR. SHORT: Did you get a fine or did they
13 write you a ticket for it?

14 MR. ZIVKOVIC: No, it was just a warning.

15 MR. SHORT: And you just stopped. But they
16 gave you a warning and you stopped.

17 MR. ZIVKOVIC: Yes, sir.

18 MR. SHORT: Okay, that's all I have. Thank
19 you, Mr. Chair.

20 CHAIRPERSON ANDERSON: Any other questions by
21 any other board members? Mr. Adams?

22 MR. ADAMS: I have no further questions.

1 CHAIRPERSON ANDERSON: Mr. Chung?

2 MR. CHUNG: No further questions Mr.

3 Chairman.

4 CHAIRPERSON ANDERSON: Mr. Z -- since I'm
5 going to butcher your last name, I apologize --

6 MR. ZIVKOVIC: No problem. Zivkovic. Yeah.

7 CHAIRPERSON ANDERSON: Thank you very much
8 for your testimony today. Please do not discuss
9 the nature of your testimony with anyone until
10 this case is over. Thank you very much, sir.

11 MR. ZIVKOVIC: Thank you.

12 CHAIRPERSON ANDERSON: You're free to go or
13 you can sit in here, but please do not go discuss
14 or accidentally have conversations with the
15 upcoming witnesses. Who's your next witness,
16 sir?

17 MR. CHUNG: Chairman Anderson, could I please
18 ask for maybe a five minute recess to use the
19 restroom?

20 CHAIRPERSON ANDERSON: You're a brave man,
21 Mr. Chung. Yes, because I was about to say --
22 we're off the record.

1 We're back on the record. Do you have
2 another witness?

3 MR. CHUNG: I do, Chairman Anderson. Our
4 third witness will be Mr. Wayne Johnson.

5 CHAIRPERSON ANDERSON: Mr. Wayne Johnson.
6 Mr. Johnson, can you raise your right hand
7 please? Do you swear or affirm to tell the truth
8 and nothing but the truth?

9 MR. JOHNSON: I do.

10 CHAIRPERSON ANDERSON: Have a seat please.
11 Your witness.

12 MR. CHUNG: Please state your full name for
13 the record and spell it for the court reporter,
14 please.

15 MR. JOHNSON: Wayne Johnson Jr., W-A-Y-N-E,
16 J-O-H-N-S-O-N, J-R.

17 MR. CHUNG: Mr. Johnson, what is your
18 occupation?

19 MR. JOHNSON: I'm a nightlife promoter and
20 marketer.

21 MR. CHUNG: Do you have any affiliation with
22 Capitale?

1 MR. JOHNSON: Yes, I've been conducting the
2 Sunday night party there for over six years now.

3 MR. CHUNG: Mr. Johnson, were you at Capitale
4 on September 21, 2015?

5 MR. JOHNSON: Yes, sir.

6 MR. CHUNG: Did you have a host that night?

7 MR. JOHNSON: Yes, sir.

8 MR. CHUNG: Who was the host?

9 MR. JOHNSON: The rapper known as The Game.

10 MR. CHUNG: Thank you. Mr. Johnson, did you
11 -- were you -- you were present at -- I'm sorry,
12 let me just refresh my recollection. You were
13 present at Capitale on September 21, 2015?

14 MR. JOHNSON: Yes, sir.

15 MR. CHUNG: Okay. Did you run into any ABRA
16 investigators that night?

17 MR. JOHNSON: Yes, three were present earlier
18 in the night and also returned later.

19 MR. CHUNG: Okay. What times -- they came
20 twice, okay. What is the first time that they
21 came to the establishment?

22 MR. JOHNSON: I got there around 11:45 and I

1 had run into one of the investigators about 12:00
2 - 12:30. I only know that because I actually
3 know one of the investigators on a social level.

4 MR. CHUNG: Okay. There were three total
5 investigators, correct?

6 MR. JOHNSON: Yes.

7 MR. CHUNG: Okay. Who do you know out of the
8 three investigators? What is his name?

9 MR. JOHNSON: Dante -- I think you pronounce
10 his last name Edgerton.

11 MR. CHUNG: Okay, Mr. Johnson, how do you
12 know Mr. Edgerton?

13 MR. JOHNSON: Back in my college days I was
14 interested in pledging at a fraternity that he's
15 a part of so we met then and then just on a
16 social level just going out and running into each
17 other, just became -- just associates.

18 MR. CHUNG: Where did you go to college?

19 MR. JOHNSON: I went to Bowie and Howard.

20 MR. CHUNG: Okay. What fraternity were you
21 thinking about pledging with?

22 MR. JOHNSON: Kappa Alpha Psi.

1 MR. CHUNG: Okay, is Mr. Edgerton a member of
2 Kappa Alpha Psi to the best of your knowledge?

3 MR. JOHNSON: To the best of my knowledge,
4 yes he is.

5 MR. CHUNG: Okay. Now, there were two other
6 investigators. Do you know their names?

7 MR. JOHNSON: I do not know t heir names, no.

8 MR. CHUNG: Okay. Can you describe -- was
9 one tall, one short? Were they the same height?

10 MR. JOHNSON: There were three.

11 CHAIRPERSON ANDERSON: Can -- why don't you -
12 - because he's --

13 MR. CHUNG: One at a time. Okay, I
14 apologize.

15 CHAIRPERSON ANDERSON: He said there were two
16 different times, so I need him to -- you to ask
17 him what period -- which one of the times he's
18 talking about.

19 MR. CHUNG: Let me clarify. Were the three
20 investigators you saw the same investigators both
21 times during the night?

22 MR. JOHNSON: Yes.

1 MR. CHUNG: Okay. And there were three
2 total?

3 MR. JOHNSON: Yes.

4 MR. CHUNG: Okay, besides Mr. Edgerton, the
5 other two investigators, were they Caucasian,
6 Asian, African-American?

7 MR. JOHNSON: Three African-American males
8 total.

9 MR. CHUNG: Okay. And how would you describe
10 the height of the two other investigators?

11 MR. JOHNSON: To the best of my knowledge, I
12 want to say Dalontee was the tallest out of the
13 three and there was one that was noticeably
14 shorter than the other two.

15 MR. CHUNG: Okay. But the other two were
16 tall, is that your testimony?

17 MR. JOHNSON: Yes, sir.

18 MR. CHUNG: Okay. Now, later on in the night
19 what time did you see these three investigators
20 return to Capitale?

21 MR. JOHNSON: I estimate around 1:30 to 1:45.
22 I was working and moving around but that's when I

1 think I ran into them.

2 MR. CHUNG: Okay. And did you talk to them
3 that night?

4 MR. JOHNSON: I did.

5 MR. CHUNG: When they returned, you talked to
6 them?

7 MR. JOHNSON: I did.

8 MR. CHUNG: Okay. Where did you talk to
9 them?

10 MR. JOHNSON: I talked to them at the end of
11 the night. Well, I talked to them twice. I said
12 hello to Dalontee when I first saw them earlier
13 and then I also talked to them at the end of the
14 night when all three investigators were right
15 outside of the office.

16 MR. CHUNG: Outside of the office, all three
17 investigators?

18 MR. JOHNSON: Yes, sir.

19 MR. CHUNG: About what time was this?

20 MR. JOHNSON: This was after hours. This was
21 after 2:00.

22 MR. CHUNG: Okay, after 2:00 a.m., sometime

1 after 2:00 a.m.

2 MR. JOHNSON: Yes.

3 MR. CHUNG: Did any of the three
4 investigators, including your friend, seem
5 intoxicated?

6 MR. JOHNSON: One of -- I did not see any of
7 them directly drink but one did seem a little --
8 his eyes were low and he was a little wobbly,
9 from my professional experience just eleven years
10 of nightlife, he did seem like he had a few
11 drinks.

12 MR. CHUNG: Thank you. Mr. Johnson, did you
13 at any time witness any servers or bartenders
14 serve alcohol after 2:00 a.m. while you were
15 there?

16 MR. ADAMS: Objection, leading.

17 MR. JOHNSON: No.

18 CHAIRPERSON ANDERSON: Mr. Chung. Cut down
19 on leading questions, please, sir.

20 MR. CHUNG: Did you witness service after
21 2:00 a.m.?

22 MR. JOHNSON: No.

1 MR. CHUNG: That's all I have.

2 CHAIRPERSON ANDERSON: Mr. Adams?

3 MR. ADAMS: How are you doing, Mr. Johnson?

4 MR. JOHNSON: Well.

5 MR. ADAMS: So, you're a promoter?

6 MR. JOHNSON: Yes.

7 MR. ADAMS: And you -- some of your
8 promotions are with Capitale?

9 MR. JOHNSON: Yes, once a week there.

10 MR. ADAMS: Sorry, pardon?

11 MR. JOHNSON: Just once a week there.

12 MR. ADAMS: All right. Do you currently have
13 a once a week promotion?

14 MR. JOHNSON: Yes.

15 CHAIRPERSON ANDERSON: Remember, sir, pull
16 the microphone closer to you so your voice will
17 because somebody's trying to pick up what's
18 there.

19 MR. JOHNSON: Understood.

20 MR. ADAMS: I want to apologize. I apologize
21 for moving too fast.

22 MR. JOHNSON: That's okay.

1 MR. ADAMS: And who owns Capitale?

2 MR. JOHNSON: David Chung and Kijun Sung.

3 MR. ADAMS: So, the owners are here?

4 MR. JOHNSON: Yes.

5 MR. ADAMS: All right. So, counsel for the
6 establishment is also one of the owners?

7 MR. JOHNSON: Yes.

8 MR. ADAMS: The one that asked you questions.

9 MR. JOHNSON: Yes.

10 MR. ADAMS: So, they stated that -- now,
11 first of all, in terms of your -- what are your
12 responsibilities as a promoter?

13 MR. JOHNSON: To market the night and to
14 bring patrons to the venue, produce sales.

15 MR. ADAMS: I apologize, what did you say?

16 MR. JOHNSON: Produce sales.

17 MR. ADAMS: And so, on -- so, basically when
18 you do that, once you get to the establishment
19 what do you normally do?

20 MR. JOHNSON: I'm typically outside for the
21 first hour or so, working.

22 MR. ADAMS: Okay. You're outside. And then

1 I guess you go inside?

2 MR. JOHNSON: I'm in and out of the venue for
3 the entirety of the night.

4 MR. ADAMS: So your responsibility isn't to
5 alcohol sales, is it?

6 MR. JOHNSON: It's to produce sales in
7 general, yes.

8 MR. ADAMS: In general, okay.

9 MR. JOHNSON: I don't serve alcohol, no, but
10 I book tables that have minimums if they purchase
11 alcohol.

12 MR. ADAMS: And your responsibility -- you do
13 not have responsibility to track alcoholic sales?

14 MR. JOHNSON: I do, actually.

15 MR. CHUNG: Objection, objection. That is a
16 leading question.

17 MR. ADAMS: It's cross.

18 CHAIRPERSON ANDERSON: Remember, it's cross
19 examination. He can do it. You can't do it on
20 direct but he can --

21 MR. JOHNSON: To clarify, I don't --

22 CHAIRPERSON ANDERSON: Mr. Johnson. All

1 right. When there's an objection that is your
2 opportunity not to say anything.

3 MR. JOHNSON: Gotcha.

4 CHAIRPERSON ANDERSON: And I will let you
5 know when you can speak.

6 MR. JOHNSON: Understood.

7 CHAIRPERSON ANDERSON: Just let the lawyers
8 and then once the lawyers fight it out then I
9 will let you know whether or not you need to
10 answer the question, sir. So, go ahead, Mr.
11 Adams.

12 MR. CHUNG: Mr. Anderson, I apologize. I
13 just want the cross to stay on the same subject
14 matter that was brought in through direct.

15 CHAIRPERSON ANDERSON: It's there so far.
16 And I'll say this to Mr. Chung, I'll say this to
17 you all, because both of you are attorneys, I
18 know that you are aware of the objections and so
19 sometimes I will stay out of it and hoping that
20 if there is an issue you will object to it,
21 because if both parties weren't attorneys then
22 maybe I would put myself a little bit more in it,

1 but I think you're both lawyers, you're doing a
2 good job in doing the objections, so, yes, sir.

3 MR. CHUNG: Mr. Johnson was here to -- the
4 direct testimony was with regard to his
5 identification of these investigators.

6 MR. JOHNSON: I have this overall plethora of
7 duties as a promoter.

8 CHAIRPERSON ANDERSON: You see, Mr. Chung,
9 you kind of opened up the -- you gave him an
10 opening. And so because you gave him an opening
11 based on the questions that he's asking so far
12 are -- it's in line because you gave him an
13 opening, so they're within the bounds of cross
14 examination. Go ahead, Mr. Adams.

15 MR. ADAMS: All right, so, again, in terms of
16 your -- I'm sorry, I forgot a question. In terms
17 of your responsibilities, do you have a
18 responsibility for observing alcoholic sales.

19 MR. JOHNSON: Can you clarify?

20 MR. ADAMS: Do you have responsibility for
21 observing alcoholic sales?

22 MR. JOHNSON: In what capacity? Let me, I

1 guess, simplify it for you. My capacity and my
2 only involvement with alcohol sales is to produce
3 them and the following day I get a report on
4 total sales. I do not track by the hour or
5 minute.

6 MR. ADAMS: All right.

7 MR. JOHNSON: That's not my responsibility.

8 MR. ADAMS: Actually, you answered my
9 question, so your responsibility is not for
10 monitoring when sales occur, correct?

11 MR. JOHNSON: No.

12 MR. ADAMS: All right. And you stated during
13 your testimony that you saw -- it seems like you
14 said you saw the investigators three times.

15 MR. JOHNSON: Twice.

16 MR. ADAMS: Twice, okay. So you saw them at
17 about, according to your testimony, 11:45 p.m.,
18 correct?

19 MR. JOHNSON: Yes.

20 MR. ADAMS: And then you saw them at 1:30 to
21 1:45, correct?

22 MR. JOHNSON: Yes.

1 MR. ADAMS: But then you said you saw them at
2 the end of the night and that was after 2:00 a.m.

3 MR. JOHNSON: They stayed.

4 MR. ADAMS: They stayed. So, you saw them on
5 a continual basis -- let me finish the question -
6 - you saw them on a continual basis for about a
7 half hour, is that what you're saying?

8 MR. JOHNSON: Wait, before or after they left
9 and returned?

10 MR. ADAMS: You said that --

11 MR. CHUNG: Objection. That's not what the
12 witness testified to.

13 CHAIRPERSON ANDERSON: Let him ask -- hold on
14 a minute -- I think -- Mr. Chung hold on --

15 MR. ADAMS: I'm the -- counsel, that's what
16 we do.

17 CHAIRPERSON ANDERSON: Hold on one minute.
18 One thing I've learned in this very short period
19 of time, that Mr. Johnson is with it, and so if
20 Mr. Adams says something he didn't say, he's
21 going to correct him, so let me hear the question
22 and I think that -- because I think Mr. Johnson

1 has perfectly made it clear what his role is and
2 what is it that he doesn't know, so let's ask the
3 question, let me hear, if Mr. Johnson doesn't
4 believe then I think that he will point out to
5 all parties that was not his testimony in this
6 particular case. So, let me hear the question.

7 MR. ADAMS: So, I'll repeat the question.
8 The question is, the second time you saw the
9 investigators between 1:30 and 1:45, is that
10 correct?

11 MR. JOHNSON: Yes.

12 MR. ADAMS: And then that you saw them after
13 2:00 a.m., is that correct?

14 MR. JOHNSON: Yes.

15 MR. ADAMS: And so they were there
16 continuously for at least -- we're stating they
17 were there for at least 15 to 20 minutes,
18 correct?

19 MR. JOHNSON: Yes.

20 MR. ADAMS: And that night The Game was
21 hosting, correct?

22 MR. JOHNSON: Yes.

1 MR. ADAMS: And who's The Game?

2 MR. JOHNSON: He's a rapper personality.

3 MR. ADAMS: He's nationally known?

4 MR. JOHNSON: Yes.

5 MR. ADAMS: So, in terms of The Game hosting
6 that night, you had a large crowd that night,
7 correct?

8 MR. JOHNSON: No larger than normal, no.

9 MR. ADAMS: And what's normal?

10 MR. JOHNSON: Capacity-wise, I don't have an
11 exact number, but tables sold out and our door
12 shut down at the appropriate time. It was a
13 normal night for us. I don't think his
14 appearance had any impact on the capacity of the
15 club. With or without a host, we produce the
16 same numbers.

17 MR. ADAMS: Okay. Very well. The number is
18 about 200 or so?

19 MR. JOHNSON: I can estimate, I don't want to
20 put a number on it, but I don't personally click
21 at the door. My door man does not have a clicker
22 so for me to make that assumption would be just

1 an assumption.

2 MR. ADAMS: But it was -- you'd say it was a
3 healthy, robust crowd in your estimation,
4 correct?

5 MR. JOHNSON: Yes, it was a good night.

6 MR. ADAMS: All right. So, obviously as a
7 promoter, this establishment can stay open until
8 3:30. Are you aware of that?

9 MR. JOHNSON: Yes.

10 MR. ADAMS: And that night was the
11 establishment open until 3:30?

12 MR. JOHNSON: No.

13 MR. ADAMS: About what time were they open
14 'til?

15 MR. JOHNSON: We close at 2:00 every single
16 Sunday. I don't think we've ever stayed open
17 past 2:00 unless that ABRA calendar allows for
18 the holiday schedule.

19 MR. ADAMS: All right, so your testimony is
20 that it was closed at 2:00 a.m., correct?

21 MR. JOHNSON: Define "closed." The doors
22 locked and empty?

1 MR. ADAMS: So in terms of closed, well,
2 actually let me ask you, at 2:00 a.m. were the
3 doors closed and empty?

4 MR. JOHNSON: No.

5 MR. ADAMS: Okay, so the patrons were still
6 within the establishment?

7 MR. JOHNSON: They were exiting the building,
8 yes.

9 MR. ADAMS: So at 2:00 a.m. -- so it's your
10 testimony that they were exiting?

11 MR. JOHNSON: At 2:00 a.m. there were still
12 people leaving, yes.

13 MR. CHUNG: Can we clarify for the record,
14 Chairman Anderson, what he means by closed?

15 MR. ADAMS: Counsel can redirect.

16 CHAIRPERSON ANDERSON: There's no pending
17 question, so there's really nothing for him to
18 clarify because there's no pending question, so
19 on redirect you can, if you need to point out to
20 us what that means then you can do that.

21 MR. ADAMS: So you stated that towards the
22 end of the night you saw three investigators near

1 the offices, correct?

2 MR. JOHNSON: Yes.

3 MR. ADAMS: And were they speaking with
4 anyone from the Capitale staff?

5 MR. JOHNSON: I believe they were speaking
6 with one of the managers. I don't remember which
7 specifically.

8 MR. ADAMS: All right, so there were three
9 people there and you stated on direct that you
10 believed that one of the investigators were, in
11 your experience, was intoxicated, correct?

12 MR. JOHNSON: Yes, that's my personal and
13 professional opinion.

14 MR. ADAMS: You did not see that person
15 drink, correct?

16 MR. JOHNSON: No, I did not directly see him
17 drink, there's too many people for me to monitor
18 one person.

19 MR. ADAMS: And you don't know anything about
20 that person's health history or health conditions
21 do you?

22 MR. JOHNSON: Not at all.

1 MR. ADAMS: All right. I have no further
2 questions.

3 CHAIRPERSON ANDERSON: Questions by board
4 members? Mr. Short?

5 MR. SHORT: Good afternoon, Mr. Johnson.

6 MR. JOHNSON: How are you?

7 MR. SHORT: How many years have you worked at
8 this establishment?

9 MR. JOHNSON: At this specific establishment?

10 MR. SHORT: Yes.

11 MR. JOHNSON: Eight years.

12 MR. SHORT: Eight years.

13 MR. JOHNSON: Before it was K Street Lounge,
14 I was there as well doing the same.

15 MR. SHORT: How long at this particular
16 location have you worked?

17 MR. JOHNSON: Eight years.

18 MR. SHORT: Eight years. So, you are a
19 professional promoter.

20 MR. JOHNSON: Yes.

21 MR. SHORT: Are you from this area?

22 MR. JOHNSON: Yes, I am.

1 MR. SHORT: Do you work for any other
2 businesses or establishments like this in the
3 area?

4 MR. JOHNSON: We have a weekly rotation of
5 six parties across multiple venues. I can give
6 you a detailed list if you want.

7 MR. SHORT: I'd like you to do that, please.

8 MR. JOHNSON: Okay. Sax on Wednesdays.

9 MR. SHORT: Okay, and where is that located?

10 MR. JOHNSON: Sax is on 734 11th Street
11 northwest. Then we have Opera which is at 1400 I
12 Street, that's on Fridays.

13 MR. SHORT: Arthur?

14 MR. JOHNSON: Opera.

15 MR. SHORT: Opera.

16 MR. JOHNSON: And then we have Rosebar on
17 Saturdays during the day. That's at 1215
18 Connecticut Avenue Northwest. Gryphon on Sundays
19 during the day which is 1337 Connecticut Avenue
20 Northwest. And then Capitale on Sunday nights,
21 obviously. And we do something also at Hookah
22 Lounge that is not like a party, per se, but we

1 do promote it as an event on Tuesdays, at 1628
2 Connecticut I want to say.

3 MR. SHORT: Would you say that most of the
4 clients that you have at these different
5 locations are pretty much regular patron. They
6 know you and you know them pretty well?

7 MR. JOHNSON: I would say about 40% of them
8 are regulars, yes.

9 MR. SHORT: Exactly what are your duties
10 outside? You say you're outside of the club more
11 than inside. So, walk us through it, you report
12 to duty at what time?

13 MR. JOHNSON: Doors open at 10:00, I try to
14 get to the club by 11:00 and by 11:00 I'm outside
15 making sure our VIP customers are taken care of
16 and they're set in a quick manner.

17 MR. SHORT: Do you walk them in the club?

18 MR. JOHNSON: No, but I meet them outside. I
19 like to maintain relationships. That's pretty
20 much the name of the game.

21 MR. SHORT: How do you assign them to a table
22 if you're outside?

1 MR. JOHNSON: We have Google Docs that we
2 work throughout the week on. They're already --
3 they already are assigned a table and reserved by
4 the time they get there.

5 MR. SHORT: Okay, and so you already know
6 what kind of beverages they want to drink?

7 MR. JOHNSON: No, I don't get into the weeds
8 of what they order, but they have a minimum they
9 have to reach and they have an assigned table. I
10 just greet them and make sure they're taken care
11 of, more so like a liaison, I guess, just to make
12 them comfortable.

13 MR. SHORT: You made it very plain that you
14 were -- plain and clear -- that you at this
15 particular establishment which we're here today
16 about, for eight years. How long at Rosebar or
17 the other places you mentioned?

18 MR. JOHNSON: How long have I been at each?

19 MR. SHORT: How many years at the other
20 locations?

21 MR. JOHNSON: I've been at Opera for four
22 years. I've been at Rosebar for three. Just to

1 clarify, we only do the day party in Rosebar so
2 that's only about four months a year, but for the
3 last three years I've been doing that day party
4 on Saturdays. Been at Gryphon for three years.
5 Been at Sax for two years. And before that,
6 there's been venues in the past that we've worked
7 with and have had, you know --

8 MR. SHORT: For the record, also, Mr.
9 Johnson, do you sell tickets or collect money at
10 the door at any of the locations?

11 MR. JOHNSON: We don't sell tickets. We do
12 collect a cover charge.

13 MR. SHORT: Over the internet?

14 MR. JOHNSON: No. We don't sell tickets over
15 the internet, not at any of the parties I've
16 named, no.

17 MR. SHORT: Okay. Well, I'm kind of curious
18 now. You say the seats are already assigned when
19 they get there.

20 MR. JOHNSON: Mm hmm.

21 MR. SHORT: How is that arranged?

22 MR. JOHNSON: So, when I say that I'm

1 speaking about table clients only. There's a
2 difference between general admission and a table
3 client.

4 MR. SHORT: Break it down for me because I'm
5 kind of new to this.

6 MR. JOHNSON: If you, for instance, reserve a
7 table, a VIP table, that you're going to do
8 bottle service at --

9 MR. SHORT: How do you reserve the table and
10 how do you reserve the bottle service?

11 MR. JOHNSON: You would contact probably me,
12 and this is why I stand outside to greet the
13 person. You'd probably contact me or you'd e-
14 mail us or e-mail the club or call the club, get
15 in contact with us in a multitude of ways.

16 MR. SHORT: So, you have a list, a list or a
17 listing.

18 MR. JOHNSON: We have -- as far as what? I'm
19 sorry.

20 MR. SHORT: Of the number of people, number
21 of tables, number of bottles.

22 MR. JOHNSON: Yes, yes every single party we

1 do every single week we have it laid out for six
2 to ten weeks, we keep an online document, a live
3 document that me and my partners can edit and
4 that the owners can see as well so we can predict
5 the night's sales and --

6 MR. SHORT: So that was going to be my next
7 question. All of these locations have an
8 occupancy load, correct?

9 MR. JOHNSON: Mm hmm.
10

11 MR. SHORT: You know the occupancy load when
12 you know the number of people coming and the
13 number of tables and so on?

14 MR. JOHNSON: Mm hmm.

15 MR. SHORT: And nothing changes?

16 MR. JOHNSON: The tables don't change. There
17 are a certain amount of tables in the club and
18 they're -- you're not going to restructure the
19 club. The tables were built and they're there
20 and they've been there.

21 MR. SHORT: You're in front of the club, you
22 see people coming in, you're greeting people.

1 How does the club know how many people are in the
2 club?

3 MR. JOHNSON: They have a clicker. My door
4 guy does not keep a clicker, the club has a
5 separate person that clicks and keeps track of
6 that.

7 MR. SHORT: Okay. On the night of this event
8 you testified that people were still leaving at
9 2:00.

10 MR. JOHNSON: Yes.

11 MR. SHORT: And you also testified that you
12 saw someone who you thought was with ABRA who was
13 intoxicated.

14 MR. JOHNSON: He seemed that way, yes.

15 MR. SHORT: Okay, so you're around the club,
16 95% of the club year round, so would you consider
17 yourself pretty much an expert at knowing who was
18 drinking or what they would drink or how much or
19 if they were inebriated? You think you're a
20 pretty good judge of that?

21 MR. JOHNSON: I would say so, yes.

22 MR. SHORT: Do you ever drink when you're

1 working at these clubs? Do you ever take just
2 one drink or --

3 MR. JOHNSON: Yes.

4 MR. SHORT: You do? Were you drinking this
5 particular night?

6 MR. JOHNSON: No, not this particular night,
7 no.

8 MR. SHORT: But you do -- you will take a
9 drink every now and then?

10 MR. JOHNSON: Every now and then, yes.

11 MR. SHORT: But on this particular night when
12 you saw an ABRA person drunk, or drinking, you
13 weren't drinking yourself?

14 MR. JOHNSON: I don't drink -- I don't
15 casually or socially drink. If I drink it's for
16 a celebration. There was nothing to celebrate.
17 It was work for me that night.

18 MR. SHORT: But first you said you would have
19 a drink every now and then?

20 MR. JOHNSON: The question is, do I drink at
21 my events? Have I drank at my events? Yes. Do
22 I drink on a regular basis at my events? No.

1 MR. SHORT: Okay, that's a good answer.

2 MR. JOHNSON: I drink at a celebra --

3 MR. SHORT: If my boss was sitting here I'd
4 say the same thing. Excuse me. I guess what
5 we're trying to get at here is bottle service,
6 serving after hours. So you know the hours of
7 all of these different locations and
8 establishments?

9 MR. JOHNSON: Yes, I do.

10 MR. SHORT: Have you ever seen any of them
11 operate after hours? Any of them? Ever?

12 MR. JOHNSON: Like, serve after hours?

13 MR. SHORT: Yes. Ever, at any time, ever?

14 MR. JOHNSON: If I had to sit down and think
15 about it, maybe. Right now, I can say no.

16 MR. SHORT: You're under oath.

17 MR. JOHNSON: Right now I can say no. If I
18 had to sit down and really think through the last
19 11 years --

20 MR. SHORT: Mr. Johnson, again, as you're
21 under oath, have you ever, ever seen anyone
22 operate after hours in your 11 years, ever?

1 MR. JOHNSON: If you're looking for a
2 specific instance I can't name one.

3 MR. SHORT: All right. It was also testimony
4 here today that on occasion over the years
5 they've had sparklers in the club and you're a
6 promoter. How many clubs that have operated or
7 worked at or promoting have sparklers been a part
8 of the festivities?

9 MR. JOHNSON: Most.

10 MR. SHORT: Most?

11 MR. JOHNSON: Yes.

12 MR. SHORT: Are they still doing it?

13 MR. JOHNSON: No, to my knowledge that's no
14 longer allowed and the fire marshal and you guys
15 have made that, so -- but that's --

16 MR. SHORT: When's the last time you saw any?

17 MR. JOHNSON: The last time I've seen a
18 sparkler in D.C. is four years, three years.

19 MR. SHORT: Would you believe or not that we
20 had a video of a club recently this year that had
21 sparklers in it, here before this board? So,
22 it's still happening.

1 MR. JOHNSON: I have not seen it at our
2 events.

3 MR. SHORT: Would you agree that it's still
4 happening at some locations?

5 MR. JOHNSON: I don't have enough knowledge
6 to say that, sir. I personally don't know any of
7 my venues that I'm at -- I'm at six venues --
8 that still do that on any night, and our nights
9 are pretty much their, I guess their flagship
10 nights, so they're not --

11 MR. SHORT: And for the record, while you're
12 still testifying, do you know the reason why the
13 District government shut down the use of
14 pyrotechnics and sparklers in establishments?
15 Especially in places you lock up?

16 MR. JOHNSON: I was told -- I was told that
17 they're obviously a fire hazard. There was that
18 fire down in South America or something like
19 that, that may have been caused by them. But I
20 just -- I just heard they're a huge fire hazard.

21 MR. SHORT: Well, thank you for your
22 testimony and hopefully we never see you again

1 for one of these kind of incidents. But, how
2 many investigators did you see that night?

3 MR. JOHNSON: Three, sir.

4 MR. SHORT: You saw three. One of them was -
5 - you thought might have been drinking?

6 MR. JOHNSON: It seemed so.

7 MR. SHORT: What were the other two doing?

8 MR. JOHNSON: When I saw them the second
9 time, they were in the hallway near the office
10 standing. And the reason I could -- I made the
11 assumption that the third, the shorter one out of
12 all three, was drinking was because they were all
13 standing in line straight up and he was kind of
14 waving -- wobbling side to side.

15 MR. SHORT: Are you aware that one of them
16 wrote the report that you saw today, the reason
17 why we're here?

18 MR. JOHNSON: I'm sorry, say that again.

19 MR. SHORT: The investigator that wrote the
20 report for the incident, the reason why we're
21 here today, do you know how tall he is?

22 MR. JOHNSON: No, sir.

1 MR. SHORT: How tall would you say he was
2 again? The one that you thought might have been
3 drinking? Will you stand up for a minute?

4 MR. JOHNSON: Yeah, yeah.

5 MR. SHORT: What's his height compared to
6 yours?

7 MR. JOHNSON: Maybe an inch shorter than me,
8 maybe.

9 MR. SHORT: And you are how tall?

10 MR. JOHNSON: I'm five-ten.

11 MR. SHORT: Okay. Are you aware that the
12 investigator -- have a seat -- the investigator
13 that wrote the report, Mr. Howze, is about three
14 inches taller than you.

15 MR. JOHNSON: Okay.

16 MR. SHORT: So, it wouldn't have been him
17 that you thought was drinking. Apparently not.

18 MR. JOHNSON: Out of the three, the two of
19 which are tall, I would say tall, over 6'2",
20 6'3", the shorter one was the one that -- out of
21 the three investigators. There were only three
22 so the shorter one out of the three. I'm very,

1 very certain and sure of who I'm speaking about
2 in my head out of the three.

3 MR. SHORT: Have you ever testified before
4 this board before?

5 MR. JOHNSON: No, sir.

6 MR. SHORT: Never been here before, never
7 been before ABRA?

8 MR. JOHNSON: No, sir.

9 MR. SHORT: Thank you very much. That's all
10 I have, Mr. Chair.

11 CHAIRPERSON ANDERSON: Mr. Alberti?

12 MR. ALBERTI: Mr. Johnson, good afternoon.
13 Thank you for coming. You talked about your --
14 what you do outside. What do you do normally
15 inside? What's your function inside? How do you
16 function inside?

17 MR. JOHNSON: I'm doing the same thing,
18 greeting guests, just facilitating the overall
19 party. I work with whatever manager and/or owner
20 is on duty just throughout the night. There's a
21 lot of tasks that go on throughout the night, for
22 instance the host -- we have to pay him, we have

1 to count the money in front of his management,
2 things like that, they take time. Those are
3 things that I'm involved in.

4 MR. ALBERTI: Okay. And you talked about the
5 size of the crowd and you said something about
6 you closed the door or something earlier in the
7 evening? What did that mean?

8 MR. JOHNSON: We usually shut down our door
9 at 1:45, so what I said was we shut down the door
10 at the normal time.

11 MR. ALBERTI: Do you have any idea how close
12 to capacity they were that evening?

13 MR. JOHNSON: I have no idea.

14 MR. ALBERTI: Okay. What is the minimum for
15 a table?

16 MR. JOHNSON: It depends on the night. On a
17 hosted night like that --

18 MR. ALBERTI: Okay, on the night that --
19 we're talking about this night.

20 MR. JOHNSON: Yeah, on that night I would
21 assume the minimums were \$1000 for these -- I'm
22 not sure if you guys know the venue, but there

1 are raised tables that have a better vantage
2 point. Those are \$1000 minimums and then there
3 are four tables that are located on the dance
4 floor that are \$500 minimums.

5 MR. ALBERTI: Okay, thank you. I've heard a
6 whole lot about sparklers. Were they using
7 sparklers that night?

8 MR. JOHNSON: No.

9 MR. ALBERTI: Okay. Thank you.

10 CHAIRPERSON ANDERSON: Any other questions by
11 any other board members? All right, hearing
12 none, go ahead, Mr. Adams if you have any
13 questions.

14 MR. ADAMS: Just confirming your testimony.
15 You said there were no sparklers on that night,
16 correct?

17 MR. JOHNSON: Not that I recall, no.

18 MR. ADAMS: And you say that the normal
19 shutdown is at 1:45 a.m.

20 MR. JOHNSON: That's when we shut down the
21 door and stop letting anyone in the club, yes.

22 MR. ADAMS: Okay, so no one can get in after

1 1:45. So, in theory someone could come in at
2 1:35 and be admitted, correct?

3 MR. JOHNSON: Yes.

4 MR. ADAMS: And so essentially they'll --
5 according to your testimony they'll be there for
6 -- what's the cover charge by the way?

7 MR. JOHNSON: Cover charge ranges from \$20 to
8 \$60 depending on --

9 MR. ADAMS: So we'd be paying \$20 to \$60 to
10 stay for 25 minutes.

11 MR. JOHNSON: Yeah.

12 MR. ADAMS: All right. You state that --
13 well, first of all, in terms of these
14 investigators, so one seemed inebriated. Is it
15 safe to assume that the other two did not seem
16 inebriated?

17 MR. JOHNSON: I can't make that assumption.

18 MR. ADAMS: All right, well based upon what
19 you observed?

20 MR. JOHNSON: Based upon what I observed
21 there was one out of the three investigators that
22 did seem inebriated.

1 MR. ADAMS: And the other two? Did they seem
2 normal?

3 MR. JOHNSON: They did not seem inebriated.

4 MR. ADAMS: Okay, thank you. What do you
5 mean that the shorter one was wobbling? Can you
6 provide a description?

7 MR. JOHNSON: So all three were lined up
8 actually next to each other near the office door
9 and with everyone standing still for one person
10 to be wobbling, that sticks out.

11 MR. ADAMS: All right.

12 MR. JOHNSON: That's the reason after a year
13 and a half that I actually remember this
14 incident.

15 MR. ADAMS: All right, and that's the
16 entirety of your observations, correct?

17 MR. JOHNSON: Yes.

18 MR. ADAMS: All right, that's it.

19 CHAIRPERSON ANDERSON: Mr. Chung?

20 MR. CHUNG: Just a quick clarification, Mr.
21 Johnson. When you say closed you meant serve or
22 the venue had no more people in it? When you

1 used the term, closed, did you mean stopped
2 serving alcohol or did you mean everyone left the
3 venue?

4 MR. JOHNSON: I mean, stopped serving
5 alcohol.

6 MR. CHUNG: And when you say, "close the
7 door" does that mean you lock the door or does
8 that mean you stop collecting a cover?

9 MR. JOHNSON: That's when we close the door
10 for admission, I'm sorry, just to clarify.

11 MR. CHUNG: Now when you say, "close the door
12 for admission," does that mean stop collecting
13 cover or does that mean you lock the doors to the
14 venue? What does that mean?

15 MR. JOHNSON: We stop collecting cover.

16 MR. CHUNG: That's all I have, thank you.

17 CHAIRPERSON ANDERSON: Mr. Johnson, thank you
18 very much for your testimony. Please do not
19 discuss the nature of your testimony with anyone
20 and you're either free to go or you can stay in
21 the room.

22 MR. JOHNSON: Thank you.

1 MR. CHUNG: Next witness is Chris Miller, Mr.
2 Chairman.

3 CHAIRPERSON ANDERSON: Alright, this is your
4 last witness right?

5 MR. CHUNG: I'm sorry, Mr. Sung is going to
6 wrap it up for us.

7 CHAIRPERSON ANDERSON: I thought you said you
8 only had two other witnesses.

9 MR. CHUNG: We'll keep it as short as
10 possible, especially with this one.

11 CHAIRPERSON ANDERSON: I'll just remind my
12 board members that the more questions you ask
13 then that's the more questions for the attorneys
14 to ask. All right, Mr. Miller, can you raise your
15 right hand, please? Do you swear or affirm to
16 tell the truth and nothing but the truth?

17 MR. MILLER: I do.

18 CHAIRPERSON ANDERSON: Have a seat, please.
19 When you speak, sir, keep the microphone close to
20 your mouth. Thank you.

21 MR. CHUNG: Will you please state your name
22 for the record and spell it out for the court

1 reporter?

2 MR. MILLER: Christian Miller, C-H-R-I-S-T-I-
3 A-N, M-I-L-L-E-R.

4 MR. CHUNG: Mr. Miller, what do you do for
5 your occupation?

6 MR. MILLER: I am manager at Capitale
7 nightclub.

8 MR. CHUNG: Okay, how long have you worked
9 there?

10 MR. MILLER: Four years.

11 MR. CHUNG: Now, did you work on September
12 21, 2015?

13 MR. MILLER: Yes.

14 MR. CHUNG: Do you recall seeing ABRA
15 investigators that evening?

16 MR. MILLER: Yes.

17 MR. CHUNG: Was there a host that evening?

18 MR. MILLER: Yes, there was.

19 MR. CHUNG: Who was the host?

20 MR. MILLER: The Game, the rapper.

21 MR. CHUNG: What time did you stop serving
22 alcohol on September 21, 2015?

1 MR. MILLER: 1:50, 1:45.

2 MR. CHUNG: And what time did the music go
3 off that night, Mr. Miller?

4 MR. MILLER: I would say 2:10.

5 MR. CHUNG: Okay. And does your license
6 require you to turn off the music at 2:00 a.m.?

7 MR. MILLER: No.

8 MR. CHUNG: Mr. Miller, do you remember
9 seeing ABRA investigators that evening?

10 MR. MILLER: Yes.

11 MR. CHUNG: How many did investigators did
12 you see?

13 MR. MILLER: There was three.

14 MR. CHUNG: Okay. Approximately what time
15 did the investigator come to the venue --
16 investigators come to the venue?

17 MR. MILLER: They came twice. They came at
18 midnight and then they came back closer to
19 closing, like between 1:45 and 2:00.

20 MR. CHUNG: Understood. They came twice that
21 evening?

22 MR. MILLER: Yes.

1 MR. CHUNG: Mr. Miller, what is the name of
2 point of sales system used at Capitale?

3 MR. MILLER: FOCUS POS.

4 MR. CHUNG: Is that properly maintained at
5 Capitale?

6 MR. MILLER: Yes it is.

7 MR. CHUNG: To the best of your knowledge, is
8 there a maintenance contract for the FOCUS system
9 at Capitale?

10 MR. MILLER: Yes, there is a contract with
11 CTSG, that company maintains our POS system.

12 MR. CHUNG: Thank you. And are you able, as
13 a manager are you able to log in to the system
14 and manipulate times and sales after they've been
15 closed out?

16 MR. ADAMS: Objection. Leading.

17 CHAIRPERSON ANDERSON: Mr. Chung?

18 MR. CHUNG: Mr. Miller are you able to change
19 the information in the FOCUS system?

20 MR. ADAMS: Objection. Leading.

21 MR. MILLER: No.

22 MR. CHUNG: It's not leading, it's a yes or

1 no question.

2 MR. MILLER: No.

3 CHAIRPERSON ANDERSON: Well, we try not to
4 ask yes or no questions on direct -- I mean on
5 cross we have the ability to do that but on
6 direct we're supposed to try to avoid those
7 questions, but go ahead, sir.

8 MR. CHUNG: Mr. Miller, do you recognize this
9 document?

10 MR. MILLER: Yes.

11 MR. CHUNG: What is it?

12 MR. MILLER: This is a printout of drinks
13 that were rung up on the night in question.

14 MR. CHUNG: Is that a copy of every single
15 transaction?

16 MR. MILLER: Yes.

17 MR. CHUNG: Is that a summary of every single
18 transaction performed on the FOCUS system on
19 September 21, 2015?

20 MR. MILLER: Yes.

21 MR. CHUNG: Do you see anything on here that
22 shows a sale after 2:00 a.m.

1 MR. MILLER: No.

2 MR. CHUNG: Okay. I'd like to introduce
3 licensee's exhibit #3 into evidence at this
4 point.

5 MR. ADAMS: I'll object, your honor --

6 CHAIRPERSON ANDERSON: I've not seen the
7 document.

8 MR. ADAMS: That's part of the problem with
9 this is that obviously the board's requirements
10 require there to be copies of exhibits. We
11 literally don't have a copy of the exhibit, so
12 the District cannot be able to properly examine
13 it as they go to witnesses and the board is not
14 able to properly examine them either. But to the
15 extent that this objection is stated, there seems
16 to be some tallies -- at the top of the tallies
17 is not 9-21-2015. There's two receipts for
18 September 21, 2015. The rest do not reflect
19 those dates. Obviously, the witness can testify
20 orally to what he believes the [Inaudible 37:59]
21 to be but if they're seeking admission of those
22 documents for a particular date, that's not

1 reflected on those documents, so I cannot -- I
2 can't agree to that because of the
3 mischaracterization of the evidence.

4 MR. CHUNG: Chairman Anderson, Mr. Miller can
5 testify and lay the foundation as to the date of
6 the document so when you look in the court report
7 it's not that hard.

8 MR. ADAMS: He's already testified to it, so
9 it's an oral testimony, that's fine, but in terms
10 of it actually coming into evidence, it's simply,
11 the information simply isn't reflected.

12 MR. CHUNG: If Mr. Adams is worried about his
13 ability to review the document and have enough
14 time, I welcome Mr. Adams to review it as long as
15 he wants to before entering it into evidence.
16 It's very germane to the case. It shows every
17 single transaction for the unit. I think the
18 board needs to know that.

19 MR. ADAMS: That wasn't the nature of my
20 objection. The nature of the objection is that
21 the information that's on the document is not
22 reflected -- sorry -- the information on the

1 document is not reflective of what is stated that
2 the document purports to be, and it obviously
3 cannot be admitted into evidence if it's not
4 accurate.

5 MR. CHUNG: Chairman Anderson, the board is
6 smart. It can look at exhibit #1 and compare the
7 numbers and the times as to those receipts and
8 certainly figure out whether or not that document
9 is authentic and whether or not it is germane to
10 September 21, 2015. It's not that hard.

11 CHAIRPERSON ANDERSON: I'm looking at this,
12 and I see #1 through #155. I don't know what it
13 is. There's no date.

14 MR. CHUNG: Understood.

15 CHAIRPERSON ANDERSON: There's no date so I'm
16 not quite sure what I'm -- what am I admitting in
17 this document? Because the date that's on top of
18 it, well I guess this information was printed
19 yesterday. I'm sorry, was it printed April 25th?

20 MR. CHUNG: I can clarify for the record, Mr.
21 Chairman. Mr. Miller: Did you run that report
22 yourself, Mr. Miller?

1 MR. MILLER: yes.

2 MR. CHUNG: And when did you do that?

3 MR. MILLER: Yesterday.

4 MR. CHUNG: Okay. And did you do a search
5 option to run that report?

6 MR. MILLER: Yes.

7 MR. CHUNG: Was that date September 21, 2015?

8 MR. ADAMS: Objection. Leading. Mr.
9 Chairman, again, we've gotten to a point where
10 there's material issues -- material issues that
11 go to whether or not the incident occurred or
12 didn't occur where they're simply being asked yes
13 and no issues -- yes and no questions.

14 MR. CHUNG: Chairman Anderson, I've sat here
15 and listened to Mr. Adams ask yes and no
16 questions --

17 MR. ADAMS: On cross I can do that.

18 MR. CHUNG: -- with regard to his basis for
19 the evidentiary rules and I've got to tell you,
20 my questions, not all of them are misleading, and
21 I've sat there and bit my lip, but asking the
22 witness about a certain date on the printout is

1 not a leading question.

2 MR. ADAMS: That wasn't the question
3 actually. The question was 'did you run this
4 search for this date to get this result'? That
5 is leading. That is leading, that's inherently
6 leading.

7 CHAIRPERSON ANDERSON: All right. You object
8 to the admission of these documents why, Mr.
9 Adams?

10 MR. ADAMS: I objected to those documents
11 coming in because it did not reflect -- the
12 information on there did not reflect the dates
13 that it is purported to reflect. But in terms of
14 the further objection to these specific
15 questions, he's being asked to tell exactly what
16 -- he's being asked by the attorney to put in
17 exactly what data went into the search or to
18 yield those results. That seems a little bit,
19 that seems leading in terms of how the witness
20 did his search. The witness can answer how he
21 conducted the search.

22 CHAIRPERSON ANDERSON: I'm not sure -- I mean

1 I'll admit the document for what it's worth but
2 I'm not -- I mean at least in my deliberation I'm
3 not quite sure how much weight I'm going to give
4 this because I still don't know what it stands
5 for.

6 MR. ADAMS: And just as a courtesy, Mr.
7 Chairman, the District really needs a copy of
8 this, I mean we're really in a situation where
9 we're being asked to --

10 CHAIRPERSON ANDERSON: You don't have a copy?

11 MR. ADAMS: We have nothing. We're sitting
12 here, we don't have exhibit #2 and we don't have
13 exhibit #3 or what's marked [Inaudible 43:02].

14 CHAIRPERSON ANDERSON: Do you have any other
15 exhibits, Mr. Chung, that you're planning to put
16 into evidence that the parties -- and a
17 recommendation I'm going to make to this board
18 that whenever we change our rules, I'm going to
19 suggest to the board that there's a timeline to
20 disclose documents, and if the documents are not
21 disclosed by that time, then we're not going to
22 consider them. I don't understand how in protest

1 hearings that people have to exchange documents
2 seven days but in a show cause hearing we have
3 the government and we have the applicant, but we
4 don't have a rule for documents. And one of the
5 problems is that in the middle of a hearing
6 someone is bringing documents and witnesses and I
7 have no idea -- as chair of the board -- I have
8 no idea what documents are coming in, I don't
9 know what the witnesses are, I don't even know
10 how many witnesses people are going to call. So,
11 that is going to be one of my recommendations to
12 the board that once we have a rule to say that we
13 need to have a specific timeline when documents -
14 - I think in all administrative hearings that
15 these rules exist that if you're going to have a
16 case there's a timeline that you have to exchange
17 documents and that would have -- that would
18 prevent this problem that we're having today.

19 MR. ADAMS: And for the record, Mr. Chairman,
20 our issue isn't with the amount of notice, our
21 issue is just that we don't have a copy.

22 CHAIRPERSON ANDERSON: Well, Mr. --

1 MR. ADAMS: We can't impeach the document.

2 CHAIRPERSON ANDERSON: Well, Mr. -- I'm just
3 stating my frustration --

4 MR. ADAMS: Understood.

5 CHAIRPERSON ANDERSON: -- not necessarily --
6 I'm not being responsive to the government, it's
7 my frustration that I'm here trying to run a
8 hearing and I don't have documents, I don't know
9 the witnesses who are coming in or how many
10 witnesses because there's no information that's
11 presented to the board and so I'm just saying
12 moving forward that's going to be one of my
13 recommendations to make a more efficient and
14 better process for all parties involved.

15 MR. ADAMS: Thank you, Mr. Chairman.

16

17 MR. CHUNG: Mr. Miller, what is the date that
18 you ran this report for?

19 MR. MILLER: September 21st.

20 MR. CHUNG: Say?

21 MR. MILLER: September 21st.

22 MR. CHUNG: What year?

1 MR. MILLER: 2015.

2 MR. CHUNG: Are there any other transactions
3 that happened on September 21, 2015, that are not
4 in these three pages listed as exhibit #3.

5 MR. MILLER: No, they're all here.

6 MR. CHUNG: And do all the transactions,
7 according to your review, show the exact time
8 each drink was served?

9 MR. ADAMS: I apologize. I didn't hear the
10 last answer.

11 MR. MILLER: September 21, 2015.

12 MR. ADAMS: He said "no" -- I believe that
13 was --

14 MR. CHUNG: I'm sorry, let me ask the
15 question again. Are there any other transactions
16 that occurred on September 21, 2015, that are
17 outside, that are not in these documents?

18 MR. MILLER: No, everything will be in these
19 documents.

20 MR. CHUNG: Thank you. Do the documents show
21 the exact time the items were entered for a
22 transaction?

1 MR. MILLER: Yes.

2 MR. CHUNG: Mr. Miller, we may have already
3 gone over this. I'm sorry, we did go over this.
4 What time did you stop serving again?

5 MR. MILLER: 1:45.

6 MR. CHUNG: Okay, and all the staff was
7 instructed, the bartenders and servers of the
8 time?

9 MR. MILLER: Yes.

10 MR. CHUNG: Okay.

11 MR. ADAMS: I object to the question and move
12 to strike the answer as leading.

13 CHAIRPERSON ANDERSON: Yes, Mr. Chung --

14 MR. CHUNG: Who did you give directions to?

15 MR. MILLER: Security, bouncers, bartenders
16 and servers.

17 MR. CHUNG: Okay. Now, for those that may
18 have had a drink in their hands, what is the
19 protocol? Let me rephrase. Do you tell security
20 for those that have a drink in their hand to
21 physically remove those drinks after 2:00 a.m.?

22 MR. MILLER: No, what I tell them to do is

1 just have the person finish the drink but I don't
2 tell them to physically remove the drink.

3 MR. CHUNG: There's been testimony as to
4 sparklers.

5 MR. ADAMS: Objection.

6 MR. CHUNG: Sorry, let me rephrase. Mr.
7 Miller, does the venue use sparklers?

8 MR. MILLER: No.

9 MR. CHUNG: And did it stop after ownership
10 told you to stop using them?

11 MR. MILLER: Yes.

12 MR. CHUNG: That's all I have, thank you.

13 CHAIRPERSON ANDERSON: Well, I never ruled on
14 the admittance of exhibit #3. Well, yes I did,
15 all right, for what it's worth it's in the record
16 but I'm not quite sure because there's -- at
17 least from my perspective there's no date on the
18 document, but whatever it's worth, it's admitted.

19 MR. CHUNG: Chairman Anderson, that was the
20 whole point of my laying the foundation as to its
21 admittance.

22 CHAIRPERSON ANDERSON: All right. Go ahead,

1 Mr. Adams.

2 MR. ADAMS: How you doing, Mr. Miller?

3 MR. MILLER: I'm doing okay.

4 MR. ADAMS: All right, so before coming to
5 this hearing, did you speak with Mr. Chung
6 regarding your testimony?

7 MR. MILLER: No.

8 MR. ADAMS: All right, so you had no
9 discussions? Okay. So why did you prepare --

10 CHAIRPERSON ANDERSON: Hold on. You have to
11 vocalize your answer.

12 MR. MILLER: Okay. No.

13 MR. ADAMS: So, why did you -- why did you
14 pull these receipts?

15 MR. MILLER: I was asked by the owner to pull
16 the receipts for that day.

17 MR. ADAMS: Okay, and so you're stating that
18 at the top of it, it says April 25, 2017,
19 correct?

20 MR. MILLER: That's because that's the day it
21 was run, so it gives you a printout of the day it
22 was run.

1 MR. ADAMS: And it's your testimony that you
2 did it for that day?

3 MR. MILLER: Yesterday, yes.

4 MR. ADAMS: And so what's reflected here is
5 when someone closed out a tab, is that correct?
6 What's reflected?

7 MR. MILLER: Yeah, the times. So, the time
8 is when it's ordered and closed, it's one -- they
9 ring it in, close it out -- so that's the time
10 when it was closed out. That's in the left line
11 right there.

12 MR. ADAMS: For each transaction you're
13 saying that the person, let's take for instance -
14 -

15 MR. MILLER: Can I have a -- ?

16 MR. ADAMS: Oh you don't have a copy?

17 MR. MILLER: I don't have a copy.

18 MR. CHUNG: Here, Walter, I'll give you this
19 one.

20 MR. ADAMS: Sure.

21 MR. CHUNG: You'll have to specify which page
22 you're on. I should have done exhibit #3.1, 3.2,

1 3.3 if I wanted to do that. Do you want to get
2 on the same page?

3 MR. ADAMS: Very well. Let's go to the first
4 page for exact cash? So, exact cash, is that
5 page #1?

6 MR. MILLER: What's page #2?

7 MR. ADAMS: It says "exact cash" with the
8 water. Actually let me back up a little bit.
9 So, you're the manager, correct?

10 MR. MILLER: Yes, sir.

11 MR. ADAMS: Are you manager of the complete
12 establishment?

13 MR. MILLER: Pardon me?

14 MR. ADAMS: Are you the manager for the
15 complete establishment?

16 MR. MILLER: Yes, sir.

17 MR. ADAMS: All right. So, you're a general
18 manager?

19 MR. MILLER: Yes.

20 MR. ADAMS: And so, I guess in terms of Ms.
21 Rivero, she works for you? Underneath you?

22 MR. MILLER: Yes.

1 MR. ADAMS: She's a subordinate?

2 MR. MILLER: Yeah.

3 MR. ADAMS: Yes?

4 MR. MILLER: We work together. I mean, I
5 don't understand your question, I mean.

6 MR. ADAMS: Again, are you the general
7 manager for the establishment?

8 MR. MILLER: Yes.

9 MR. ADAMS: So, the VIP section, does that
10 come underneath your responsibilities?

11 MR. MILLER: Yes, everything would come under
12 my responsibilities but she controls the VIP
13 section if that's what you're getting to.

14 MR. ADAMS: Okay.

15 MR. MILLER: She handles everything to deal
16 with bottle service, table service and VIPs.

17 MR. ADAMS: And how about Mr. Zivkovic?

18 MR. MILLER: Same thing. He's a manager
19 also. He handles bar, security, if Ms. Rivero's
20 not there he'll handle the tables.

21 MR. ADAMS: And you handle all their
22 responsibilities, is that safe to say?

1 MR. MILLER: Yes.

2 MR. ADAMS: All right, okay, very well,
3 that's what I mean by general manager. So, we
4 say -- we talk about a check. Let's go to the
5 first page at the very top there's a check #1 for
6 Edwin. Do you see that one?

7 MR. MILLER: Yes.

8 MR. ADAMS: And 0.37. Is 0.37, is that
9 12:37?

10 MR. MILLER: Yes.

11 MR. ADAMS: And I guess the server is Penny?

12 MR. MILLER: Penny, yes.

13 MR. ADAMS: All right, so you're saying that
14 you open it and close it all at the same time.

15 MR. MILLER: Yes.

16 MR. ADAMS: All right, so your server goes to
17 the system, enters what the transaction is, plus
18 payment and it's closed at that point?

19 MR. MILLER: Yes, sir.

20 MR. ADAMS: So, service happens at a
21 different time, correct? This doesn't include
22 the time that the actual beverage is served does

1 it?

2 MR. MILLER: This, like for #1, that's what
3 you're asking? If you're asking if the #1 got
4 their beverage at 12:37?

5 MR. ADAMS: Yes, that's what I'm asking.

6 MR. MILLER: Yes.

7 MR. ADAMS: So, the server was at the system
8 and served the beverage all at 12:37?

9 CHAIRPERSON ANDERSON: You have to say yes or
10 no, sir.

11 MR. MILLER: Yes, yes.

12 MR. ADAMS: So, you have a VIP section?

13 MR. MILLER: Yes, sir.

14 MR. ADAMS: And on Sundays it tends to be
15 crowded, correct?

16 MR. MILLER: Yes.

17 MR. ADAMS: So, let's say Edwin ordered a
18 bottle of champagne, he's in the VIP section?

19 MR. MILLER: Yeah.

20 MR. ADAMS: All right, so you're saying that
21 the person has entered -- the server has entered
22 the order into the system at 12:37. Is that a

1 yes or no?

2 MR. MILLER: Yes. So, you're saying if Edwin
3 ordered a bottle at 12:37 --

4 MR. ADAMS: Right.

5 MR. MILLER: -- it would be entered in the
6 system at 12:37.

7 MR. ADAMS: And so, you're saying at 12:37
8 the person also receives the beverage?

9 MR. MILLER: Yes.

10 MR. ADAMS: So, within that very same minute,
11 no matter what?

12 MR. MILLER: Well, it depends. If she
13 entered it, it's going to take her some time to
14 get -- if he's at a table it's going to take her
15 some time to get to the table, or if he's at the
16 bar -- it depends, you know, if he's at the bar
17 or if he's at a table. The time would matter.

18 MR. ADAMS: Okay, now let's say a bartender.
19 So, a bartender.

20 MR. MILLER: Yeah, it's instant with a
21 bartender.

22 MR. ADAMS: All right.

1 MR. MILLER: It's almost, 'let me get a
2 beer,' boom, close out.

3 MR. ADAMS: But even then it takes time for
4 the bartender to actually pour the drink, right?

5 MR. MILLER: Yeah, maybe a minute.

6 MR. ADAMS: All right.

7 MR. MILLER: Forty seconds.

8 MR. ADAMS: So, these times, they don't have
9 anything to do with the actual physical service
10 does it?

11 MR. CHUNG: Objection. He just answered the
12 question as to when a bartender --

13 MR. ADAMS: You know what? That's fine,
14 that's the answer, then I'm good. I withdraw the
15 question.

16 CHAIRPERSON ANDERSON: All right.

17 MR. ADAMS: At your establishment, do you
18 have tabs?

19 MR. MILLER: Bar tab?

20 MR. ADAMS: Yes.

21 MR. MILLER: Yes.

22 MR. ADAMS: All right, so a bar tab, that

1 means a person opens it at a certain time and
2 closes it later.

3 MR. MILLER: And closes it out later, yes.

4 MR. ADAMS: All right. So, that wouldn't be
5 reflected here, correct?

6 MR. MILLER: A bar tab?

7 MR. ADAMS: Yes.

8 MR. MILLER: Yeah, everything -- it's -- this
9 represents all the checks that were opened and
10 paid on the night. So, a bar tab could be
11 included in this.

12 MR. ADAMS: All right, so in other words this
13 doesn't -- so, once a tab is opened and is closed
14 at a later time, what time would be reflected?
15 The first time or the second time?

16 MR. MILLER: I'm not understanding your
17 question.

18 MR. ADAMS: Okay, so let's say Edwin at 12:37
19 -- let's say he opened a tab. So, is that when
20 he ordered a drink and said 'I want a tab'?

21 MR. MILLER: Yes.

22 MR. ADAMS: Okay, so then he pays at a

1 different time?

2 MR. MILLER: If he pays later it shows the
3 time when it was opened.

4 MR. ADAMS: So it will still say 12:37?

5 MR. MILLER: Yes.

6 MR. ADAMS: So, Edwin could in theory get
7 four or five drinks and then -- and it'll be
8 maybe 1:30, it'll still say 12:37?

9 MR. MILLER: Yeah, when it was opened.

10 MR. ADAMS: All right, thank you.

11 MR. CHUNG: Objection. I don't think that's
12 what the witness testified to.

13 CHAIRPERSON ANDERSON: Well --

14 MR. CHUNG: He asked him about entering
15 drinks.

16 CHAIRPERSON ANDERSON: There's no question
17 for you to object to. There was a question that
18 was asked and the witness answered the question
19 and so there's nothing to object to. All right,
20 okay.

21 MR. ADAMS: It's a redirect.

22 CHAIRPERSON ANDERSON: I'm sorry?

1 MR. ADAMS: Nothing, nothing. I withdraw my
2 last comment.

3 CHAIRPERSON ANDERSON: I'm trying to figure
4 out, okay that was, have a seat please, Mr. Chung
5 because I think it's our time to ask questions.
6 Go ahead, Mr. Alberti.

7 MR. ALBERTI: So, Mr. Miller I'm a little
8 curious here about this last question. So, if I
9 come in to your establishment and I open up a
10 tab, I'm at a table, I'm at a big party, and I'm
11 going to treat them all, right? So, I open up
12 the tab. Is that when it then gets sent through
13 into the POS system?

14 MR. MILLER: Yes.

15 MR. ALBERTI: Okay. So I'm there all night
16 and I'm ordering drinks all night, but my tab
17 will always read the time when I first opened
18 that tab, is that correct?

19 MR. MILLER: Yes.

20 MR. ALBERTI: Okay, and so all of these
21 things on here are the times, on these exhibits,
22 are the times that the tab was opened, is that

1 correct?

2 MR. MILLER: Yes.

3 MR. ALBERTI: Thank you. But I have a
4 question here, about these two documents. So,
5 you have these two documents, exact case, Visa
6 and MC, which I guess is Mastercard, right?

7 MR. MILLER: What page are you on?

8 MR. ALBERTI: Well, I've got two pages here.

9 CHAIRPERSON ANDERSON: Well, he doesn't have
10 -- do you have the document?

11 MR. MILLER: Yeah, I just --

12 CHAIRPERSON ANDERSON: All right.

13 MR. ALBERTI: So, the two documents I'm
14 looking at, there's two documents, one says exact
15 cash at the top. And then the other one says
16 Visa and MC at the top.

17 MR. MILLER: Okay.

18 MR. ALBERTI: All right. Would there have
19 been any other transactions that evening?

20 MR. MILLER: No.

21 MR. ALBERTI: They would have all been exact
22 cash, Visa or Mastercard?

1 MR. MILLER: Yeah, cash or credit card.

2 MR. ALBERTI: If there are gaps in these
3 numbers, can you explain that?

4 MR. MILLER: Gaps in the -- what numbers?

5 MR. ALBERTI: In the tab numbers.

6 MR. MILLER: You mean, like --

7 MR. ALBERTI: One, two, three, four, five,
8 six, seven, eight -- but there are gaps, can you
9 explain that?

10 MR. MILLER: It's just that they were, so
11 yeah, if you pay with a credit card and the
12 person behind you pays with cash they would be on
13 separate reports.

14 MR. ALBERTI: Okay, great. So, I'm going to
15 be a little more specific with my question.
16 Exact cash, I see number one --

17 MR. MILLER: Yes sir.

18 MR. ALBERTI: -- at the very top, right?

19 MR. MILLER: Yes.

20 MR. ALBERTI: Pay close attention. I look
21 for #2, can you tell me where #2 is?

22 MR. MILLER: Okay, #2 --

1 MR. ALBERTI: On any of these. Can you find
2 a tab #2 on any of these?

3 MR. MILLER: Number 2 would be a promoter's
4 tab which would have been comped out at the end
5 of the night so it would not reflect on these
6 reports. These reports are just --

7 MR. ALBERTI: Ah, a promoter's tab, okay.
8 Great. So, that would be the same with -- I'm
9 looking at this. I've got -- I'm looking for --
10 now wait I'm looking at the top here. I'm going
11 #5, #6. I don't see those. Would those have
12 been promoter tabs?

13 MR. MILLER: Those would have been promoter
14 tabs or tabs that were voided, bartender mistake,
15 a spill tab.

16 MR. ALBERTI: Okay, very good. I have no
17 further questions. Thank you.

18 CHAIRPERSON ANDERSON: Mr. Short?

19 MR. SHORT: Good afternoon, sir.

20 MR. MILLER: Good afternoon.

21 MR. SHORT: You are general manager of a
22 bustling nightclub?

1 MR. MILLER: Yes, sir.

2 MR. SHORT: Can I ask you how long you've
3 been in the business?

4 MR. MILLER: Four years.

5 MR. SHORT: Four years?

6 MR. MILLER: Yes, sir.

7 MR. SHORT: How long -- did you manage
8 anything before that?

9 MR. MILLER: No.

10 MR. SHORT: Have you ever had any training in
11 public safety when it comes to places the public
12 assembles in?

13 MR. MILLER: Yes.

14 MR. SHORT: What kind of training did you
15 have and explain it?

16 Break it down for me.

17 MR. MILLER: Okay, I had training with a
18 previous job I had where we did crowd control.

19 MR. SHORT: What kind of job was that? What
20 kind of job?

21 MR. MILLER: It was security. I worked
22 security.

1 MR. SHORT: Security for what? For a
2 gymnasium, for a cafeteria? What was it for?

3 MR. MILLER: Yeah, I did for several venues
4 through the company.

5 MR. SHORT: Okay, whether you can tell me or
6 not, was it security for a building like this?
7 Security for an auto parts store? For a
8 McDonalds?

9 MR. MILLER: It was residential buildings and
10 restaurant.

11 MR. SHORT: Restaurant. Okay which
12 restaurant did you work at before this one?

13 MR. MILLER: Sequoia in Georgetown.

14 MR. SHORT: In Georgetown. What was it?

15 MR. MILLER: Sequoia

16 MR. SHORT: Big place, nice restaurant. So,
17 what training did you get for that, before you
18 wound up at Secoya and had training?

19 MR. MILLER: I went to this company, Durant
20 and Associates, and we did training through them,
21 through the company that hired me.

22 MR. SHORT: Okay, tell me when you first got

1 any training about sparklers or anything like
2 that for nightclubs or places of public assembly.

3 MR. MILLER: At Capitale.

4 MR. SHORT: Excuse me?

5 MR. MILLER: At Capitale.

6 MR. SHORT: Capitale's the place?

7 MR. MILLER: Regarding sparklers, yes sir.

8 MR. SHORT: Were they using them when you
9 first got there?

10 MR. MILLER: Yes.

11 MR. SHORT: Four years ago?

12 MR. MILLER: Yes.

13 MR. SHORT: And when did they stop?

14 MR. MILLER: I don't recall but it was
15 probably two years ago I would say.

16 MR. SHORT: So, you haven't seen a sparkler
17 in two years?

18 MR. MILLER: No, sir.

19 MR. SHORT: So, if someone said they saw a
20 sparkler in your club, that would not be the
21 truth?

22 MR. MILLER: It wouldn't be us. We use LED

1 lights now, not sparklers.

2 MR. SHORT: Explain those.

3 MR. MILLER: Those are battery operated with
4 white lights.

5 MR. SHORT: Strobes?

6 MR. MILLER: Strobes, exactly.

7 MR. SHORT: Okay, that's what you were
8 saying.

9 MR. MILLER: Strobe.

10 MR. SHORT: But I guess the bottom line is
11 when you first got there they were using real
12 sparklers?

13 MR. MILLER: Yeah.

14 MR. SHORT: What caused you to stop?

15 MR. MILLER: The owner sent an e-mail and
16 told us to stop.

17 MR. SHORT: But none of your training told
18 you that you shouldn't have done that?

19 MR. MILLER: No, sir.

20 MR. SHORT: It's been on the books for 30
21 years in Washington, D.C. and all over the
22 country actually. But when you first got there

1 although it was on the books you were still doing
2 it?

3 MR. MILLER: We were still doing it.

4 MR. SHORT: With the training that you had.
5 All right, thank you, that's all I have Mr.
6 Chair.

7 CHAIRPERSON ANDERSON: Any other questions by
8 any other board members? Hearing none, Mr. Adams?

9 MR. ADAMS: I have no questions.

10 CHAIRPERSON ANDERSON: Mr. Chung?

11 MR. CHUNG: No further questions, thank you.

12 CHAIRPERSON ANDERSON: Thank you very much.
13 Mr. Miller, thank you very much for your
14 testimony. You can step down. Please do not
15 discuss the nature of your testimony with anyone
16 else in this case until this case is over.

17 You're free to go, sir. Thank you very much. Mr.
18 Chung, do you have another witness?

19 MR. CHUNG: Do you already have a copy of
20 this entered as exhibit #3?

21 CHAIRPERSON ANDERSON: Yes, I have.

22 MR. CHUNG: Licensee's exhibits #1, #2, and

1 #3 for the licensee?

2 CHAIRPERSON ANDERSON: Yes, I have.

3 MR. CHUNG: My final witness is Mr. Kijun
4 Sung, the licensee.

5

6 TO BE CONTINUED.